COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION
COMMITTEE REPORT

1350 Pennsylvania Avenue, N.W., Suite 404, Washington, D.C. 20004

TO: All Councilmembers

FROM: Councilmember Anita Bonds
Chairperson, Committee on Housing and Neighborhood Revitalization

DATE: December 1, 2021

SUBJECT: Report on B24-0096, the "Eviction Record Sealing Authority Amendment Act of 2021,"as amended and renamed the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2021."

The Committee on Housing and Executive Administration reports **favorably** on B24-0096, the "Eviction Record Sealing Authority Amendment Act of 2021," as amended and renamed the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2021," and recommends its approval by the Council of the District of Columbia.

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I. Purpose and Background

Purpose

The purpose of the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2021" is to extend, and in some cases expand, on a permanent basis, certain tenant protections that have been in effect on an emergency and temporary basis during the COVID-19 public health emergency. These protections include:

1. New written notice requirements for housing providers in nonpayment of rent cases. Previously, housing providers were not required to serve written notices upon tenants in nonpayment of rent cases. During the public health emergency, and in the gradual lifting of the eviction moratorium in nonpayment of rent cases, the Council required housing providers to serve written notices on tenants, retain photographic evidence of service of notices, and required those notices to contain certain information. This bill will extend many of those provisions on a permanent basis.
2. New threshold requirements in nonpayment of rent cases. This bill precludes the filing of a complaint for eviction for nonpayment of rent in an amount less than $600. The bill also prohibits housing providers from filing a complaint for eviction if the housing provider does not have a valid rental registration or claim of exemption and current business license;
3. The sealing of Court records in all eviction cases that do not result in a judgment for possession in favor of the housing provider, 30 days after the final resolution of the eviction proceeding:
4. The sealing, after three years, of all Court eviction records, except under certain limited circumstances, in all eviction cases that are resolved in favor of the housing provider; and
5. Enhanced protections against discrimination in housing based on a tenant's source of income, adding the existence of a sealed eviction record as a protected trait under the District's Human Rights Act.

Background

The "Eviction Record Sealing Authority Amendment Act" was first introduced by Councilmembers Cheh and Bonds on October 16, 2018.[1] It was referred to the Committee on Housing and Neighborhood Revitalization and the Committee on Judiciary and Public Safety; however, neither committee held a hearing on the measure during Council Period 22. The bill was re-introduced as B23-0338, the "Eviction Record Sealing Authority Amendment Act of 2019" on

[1] https://lims.dccouncil.us/Legislation/B22-1012

June 18, 2019, by Councilmembers Cheh, Allen, Nadeau, Grosso, Bonds, Todd, and Silverman, and co-sponsored by Councilmember McDuffie.[2]

On October 30, 2020, the Committee on Housing and Neighborhood Revitalization and Committee on Government Operations held a joint hearing on B23-0338, the "Eviction Record Sealing Authority Amendment Act of 2019," at which public and government witnesses testified.[3]

On October 6, 2020, before the Committee had taken any action on the measure, the Council adopted PR23-0968, the "Fairness in Renting Emergency Declaration Resolution of 2020"; B23-0940, the "Fairness in Renting Emergency Amendment Act of 2020," and B23-0941, the "Fairness in Renting Temporary Amendment Act" on first reading. As indicated in the emergency declaration resolution, the Council took this action out of an abundance of caution, in anticipation of the eventual lifting of the eviction moratorium it had put in place earlier, to last for the duration of the COVID-19 pandemic public health emergency plus 60 days.

The "Fairness in Renting" emergency and temporary measures contained many of the key provisions of the "Eviction Record Sealing Amendment Act." It provided for new written notice requirements for housing providers in nonpayment of rent cases; new threshold requirements in nonpayment of rent cases; the sealing of Court records in cases that do not result in a judgment for possession in favor of the housing provider 30 days after a judgment; the sealing after three years of Court records in cases that are resolved in favor of the housing provider; and enhanced protections against discrimination in housing. In enacting the emergency, the Council found that "eviction records can have devastating consequences for tenants," and is "particularly acute for low income residents and those who have experienced homelessness."

"In fact, eviction records are one of the primary barriers to housing for vulnerable residents and may exacerbate the financial difficulties that led to the tenant facing eviction in the previous residence," the Council found.

The "Fairness in Renting Amendment Act" has remained in effect, on an emergency, congressional review emergency, and temporary basis, and will be extended into calendar year 2022, once the current temporary version of the measure goes into effect.[4]

The Eviction Record Sealing Authority Amendment Act of 2021, as introduced on February 23, 2021 (B24-096) and the Eviction Protections and Tenant Screening Amendment Act of 2021, as introduced on March 1, 2021 (B24-119), together serve as a permanent version of the Fairness in Renting Emergency and Temporary legislation.

[2] See, Legislative Information Management System (LIMS), Legislation Detail, B23-0338 – Eviction Record Sealing Amendment Act of 2019, https://lims.dccouncil.us/Legislation/B23-0338

[3] Ibid.

[4] https://lims.dccouncil.us/Legislation/B24-0412

II. Recent Legislative History

On February 23, 2021, B24-096, the "Eviction Record Sealing Authority Amendment Act of 2021", was introduced by Councilmember Mary Cheh. On March 2, 2021, the bill was referred to the Committee on Housing and Executive Administration, and on May 20, 2021, the Committee on Housing and Executive Administration held a public hearing on the bill.[5] At that same hearing, B24-106, the "Fair Tenant Screening Act of 2021," was also discussed.[6] The purpose of B24-96 was to provide the Superior Court of the District of Columbia with the ability to seal eviction records in certain circumstances. Specifically, the legislation required that the Court seal eviction records where the Court did not find for the landlord or the landlord withdrew their claim. Among other things, the bill required that the Court seal all other eviction records after three years and authorized the Court to seal certain eviction records upon motion by the defendant.[7] B24-106, the "Fair Tenant Screening Act of 2021," prohibited housing providers from inquiring into the source of income and credit history of a prospective tenant. The bill would also require housing providers to notify prospective tenants of specific information before collecting any application fee, and strengthened penalties.[8]

On Tuesday, May 25, 2021, the committee held a hearing on B24-119, the "Eviction Protections and Tenant Screening Amendment Act of 2021.[9] B24-119 was introduced by the Chairman on March 1, 2021, and likewise referred to the Committee on Housing and Executive Administration.[10] This bill precluded the filing of a complaint for eviction and nonpayment of rent in an amount less than $600.[11] It also precluded the filing of a complaint without a current rental housing license and required written notice of the housing provider's basis for taking adverse action against the prospective tenant and gave the tenant an opportunity to dispute the notice. Finally, the bill established criteria for which tenant screening would be deem lawful.[12]

III. Committee Reasoning

Eviction is a key driver of housing instability, homelessness, and poverty and the consequences of eviction, even the mark of an eviction filing, can create barriers to finding new housing.[13] In 2018, approximately 11% of DC renter households were impacted by the eviction process, with 59% receiving at least one additional eviction filing. Eviction filings and records result

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[5] See, Hearing Notice on the matter of B24-96 – Eviction Record Sealing Authority Amendment Act of 2021 & B24-106 – Fair Tenant Screening Act of 2021. https://lims.dccouncil.us/downloads/LIMS/46603/Hearing_Notice/B24-0096-Hearing_Notice1.pdf

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] See, Hearing Notice on the matter of B24-119 – Eviction Protections and Tenant Screening Amendment Act of 2021. https://lims.dccouncil.us/downloads/LIMS/46640/Hearing_Notice/B24-0119-Hearing_Notice1.pdf

[10] See, Legislative Information Management System (LIMS), https://lims.dccouncil.us/Legislation/B24-0119

[11] Ibid.

[12] Ibid.

[13] Brian J. McCabe, Eva Rosen. "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Stability." Fall 2020.

in "housing providers often automatically reject[ing] applicants… even when the case was dismissed…or if it was filed years ago."[14] Importantly, eviction filings and records disproportionately impact tenants of color and are spatially concentrated in Wards 7 and 8 in the District, where the largest share of Black residents and the highest poverty rates in the city exist.[15] By contrast, the wards with the lowest filing rate – Wards 2 and 3 – have among the lowest poverty rates and the smallest share of Black residents in the city.[16] In 2018, of all city-wide filings, Ward 8 had 34% of all filings and 35.5% of all executed evictions, whereas in Ward 3, which is 7% Black, had only 3.2% of all city-wide eviction filings.[17] Statistics show that the higher the share of Black residents correlates with a higher percentage of filings per 100 renter households.[18] Addressing the correlation between race and eviction filing rate by sealing these records will consequently address housing and economic inequality, two central racial justice issues in the District. Sealing records is key to "preventing the stigma of a past eviction from marring a tenant's chances of finding stable housing in the future", especially because eviction records follow tenants through their residential records and often through their credit scores, which housing providers frequently evaluate and consider when screening a tenant. The decision of the Council to legislate record sealing would be in line with several other jurisdictions.

During the hearings held on May 20, 2021 and May 25, 2021, the Committee on Housing and Executive Administration heard compelling testimony from key witnesses and tenant advocates arguing that the mere existence of an eviction record can operate against the interest of tenants attempting to obtain housing in the District and are often used by landlords to discriminate against those in search of housing due to the prevalent stigma of an eviction filing.[19] According to Brian McCabe, a researcher and faculty member at Georgetown University's McCourt School of Public Policy, "these public records leave a lasting mark on tenants who have experienced the eviction process."[20] Additionally, McCabe's research shows that "the overwhelming majority of tenants with an eviction filing - about 19 out of 20 - do *not* ultimately get evicted".[21] In fact, in 2018, only approximately 5.5% of filings resulted in a formal eviction. While more than two thirds of filed cases are dismissed, the existence of an eviction record, regardless of whether it is a filing or executed

[14] Testimony of Gwendolyn Washington, Esquire. May 25, 2021

[15] Brian J. McCabe, Eva Rosen. "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Stability." Fall 2020.

[16] Ibid.

[17] Ibid.

[18] Ibid.

[19] Testimony of Brian McCabe and Eva Rosen. Georgetown University. May 20, 2021.

[20] Testimony of Brian McCabe and Eva Rosen. Georgetown University. May 20, 2021.

[21] Brian J. McCabe, Eva Rosen. "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Stability." Fall 2020.

eviction, "makes it harder for tenants to find housing in the future,"[22] due to the fact that eviction filings still result in a publicly accessible legal record that can be searched on the court website.[23]

Tenant advocates testified that because eviction filings are often due to "one-time arrearages, other nonrecurring circumstances, or indeed outright errors", these filings should not perpetually follow and plague District residents. An eviction record serves as a veritable impediment for a prospective renter who could demonstrably be a good tenant, however, because of the accessibility and "unreasonable reliance on eviction records as determinants of good tenants", public eviction records thus "create a sort of 'blacklist'...[and] may mischaracterize the experiences of low-income tenants."[24]

Typically, roughly 32,000 eviction actions are filed annually against approximately 18,000 renter households[25], however, projections made during the fall of 2020 estimate that there could be between 20,000 and 40,000 eviction filings within only the first few months after the eviction moratorium expires.[26] Importantly, approximately 93% of eviction filings are filed for nonpayment of rent, reflecting a common debt collection strategy by landlords. Many tenants undoubtedly will "continue to experience unprecedented financial turmoil caused by the pandemic for some time to come,"[27] especially due to the cease of financial assistance to households from state and local governments. Additionally, knowing that income volatility among low-income renters is one of the main drivers of eviction[28], it is timely and paramount for the Council to permanently enact anti-discrimination legislation based on the existence of an eviction filing or record. Giving the courts the authority to seal tenants' records would help prevent landlord discrimination against tenants with an eviction history, giving tenants a fresh start.[29]

With regards to the existence of a sealed eviction record, the Committee strengthened anti-discrimination provisions by stipulating that cases resulting in an outcome that is not favorable to a housing provider will have to be sealed after 30 days, which also addresses concerns raised regarding the possible spontaneous sealing of records. In response to evidence showing that process servers were losing notices, the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2021 requires that written notices be served at least 30 days prior to an eviction filing and that housing providers provide photographic evidence that these notices were properly served at the time of filing in order to eliminate any abusive behavior.

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[22] Testimony of Brian McCabe and Eva Rosen. Georgetown University. May 20, 2021.

[23] Brian J. McCabe, Eva Rosen. "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Stability." Fall 2020.

[24] Ibid

[25] Ibid.

[26] Ibid.

[27] Testimony of Johanna Shreve, Chief Tenant Advocate. May 20, 2021

[28] Brian J. McCabe, Eva Rosen. "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Stability." Fall 2020.

[29] Ibid.

Earlier versions of the bill required notices to be served to the Rent Administrator, however, this stipulation has been removed from the final print because the process would potentially be onerous, costly, impractical, and unworkable due to the creation of a new avenue of receiving public documents and would present new information-management complications. The RAD would most likely be flooded with notices, especially considering that each year landlords file an average of 32,000 residential eviction filings with the court, thus, the Committee did not see an advantage relative to the cost.

During the Fall of 2020, the Council unanimously passed emergency legislation that provided the Court with the authority to seal these records. Now, as the District nears the end of the public health emergency, it is all the more crucial that the Court's authority is made permanent. This legislation would ensure that eviction records—and the harm that they cause—do not follow tenants for the rest of their lives.

B24-0106: Fair Tenant Screening Act of 2021

Purpose

The purpose of B24-0106, the "Fair Tenant Screening Act of 2021", introduced by Councilmembers Gray, Nadeau, and T. White, is to amend the Human Rights Act of 1977 to prohibit housing providers from inquiring into the source of income and credit history of a prospective tenant; to require housing providers to notify prospective tenants of specific information before collecting any application fee; and to strengthen penalties.

Background

Some landlords in the District utilize discriminatory tactics to deny housing to the most vulnerable residents and this bill is a positive step towards putting an end to the maltreatment of these residents. Too many landlords and tenant screening companies use unfair and irrelevant screening criteria to avoid renting to the District's most vulnerable residents including, but not limited to, voucher holders and tenants with any eviction record regardless of the context. This bill addresses the inequities in the screening process by establishing a set of requirements to which landlords must adhere when determining whether to rent to a particular applicant. The bill attempts to achieve racial equity in the tenant screening practice.

B24-0119: Eviction Protections and Tenant Screening Amendment Act of 2021

Purpose

The purpose of B24-0119, the "Eviction Protections and Tenant Screening Amendment Act of 2021", introduced by Chairman Mendelson, is to amend Section 16-1501 of the District of Columbia Official Code to provide that the person aggrieved shall not file a complaint seeking restitution of possession for nonpayment of rent in an amount less than $600 and to provide that person aggrieved shall not file a complaint seeking restitution of possession without a current rental housing license; and to amend the Rental Housing Act of 1985 to provide that a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an

adverse action on certain criteria, to require a housing provider to provide written notice to a prospective tenant of the housing provider's basis for taking adverse action against the prospective tenant, and to provide the tenant an opportunity to dispute the information forming the basis of the housing provider's adverse action.

Background

Landlords should comply with certain licensing requirements before renting the accommodation, which will help ensure that the landlord is compliant with the housing code and all tax obligations. Additionally, given the data showing that a high percentage of filings do not result in an actual eviction or are never prosecuted, establishing a threshold amount for an eviction action for nonpayment of rent is good policy. A minor arrearage should not threaten the tenant with homelessness due to an eviction record, which would make finding new housing extremely difficult.

Tenants often report that they are subject to evictions that are unfair or even completely based on landlord error. The eviction action taken by a landlord creates an eviction record that can have a devastating impact on the tenant's life, impeding their ability to rent a new apartment or to secure a job that requires a security clearance, for example. Once an eviction case is filed in the District of Columbia, it becomes a public record which, unfortunately, results in housing providers automatically rejecting applicants with eviction case records, even when the case was dismissed for having been filed based on unlawful reasons or if it was filed many years prior. The need for legal standards regarding tenant screening is pertinent as it would improve the barriers to rental housing for the District's most vulnerable residents.

Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2021

The purpose of the proposed legislation, which reconciles the three aforementioned bills, entitled the "Fairness in Renting and Eviction Record Sealing Authority Amendment Act of 2021", is to amend Section 16-1501 of the District of Columbia Official Code to provide that the person aggrieved shall not file a complaint seeking restitution of possession for nonpayment of rent in an amount less than $600 and to provide that person aggrieved shall not file a complaint seeking restitution of possession without a current rental housing license; to amend the Rental Housing Act of 1985 to serve a written notice on a tenant before evicting the tenant for nonpayment of rent, to require photographic evidence to be submitted to court if a summons is posted on the property, to require notice in a tenant's primary language if the landlord knows a tenant speaks a covered language other than English, to prohibit a housing provider from filing a claim to recover possession of a rental unit for the nonpayment of rent unless the housing provider has provided the tenant with at least 30 days' written notice of its right to do so, to specify language that must be included in a nonpayment notice, to require the Court to dismiss claims for possession in certain circumstances, to prohibit eviction if the housing provider does not have a current business license, to require the Court to seal certain eviction records, to authorize the Court to seal certain evictions records upon motion by a defendant, to authorize the Court to release sealed eviction records under limited circumstances with privacy protections in place, to require disclosure of certain information prior to requesting information or fees for the purpose of screening a prospective tenant, to limit the fees charged to a prospective tenant, to require a refund of application fees under certain circumstances, and to prohibit the use of certain information for the purposes of adverse actions against a prospective tenant; to amend the Human Rights Act of 1977 to describe types of actions that may

be considered unlawful source of income discrimination, to prohibit discrimination in housing based on a person having a sealed eviction record, and to prohibit conditioning real estate transactions and other terms or conditions of housing on disclosure of a sealed eviction record.

IV. LEGISLATIVE CHRONOLOGY

B24-0096:

February 23, 2021	B24-0096 is introduced by Councilmember Cheh at Office of the Secretary
March 2, 2021	B24-0096 is referred to the Committee on Housing and Executive Administration with comments from the Committee on Judiciary and Public Safety
March 5, 2021	Notice of Intent to Act on B24-0096 Published in the *District of Columbia Register*
April 26, 2021	Notice of Public Hearing filed in the Office of the Secretary
April 30, 2021	Notice of Public Hearing Published in the *District of Columbia Register*
May 20, 2021	The Committee on Housing and Executive Administration holds a Public Hearing on B24-0096
December 1, 2021	The Committee on Housing and Executive Administration holds an additional markup meeting on B24-0096

B24-0106:

February 24, 2021	B24-0106 is introduced by Councilmembers Gray, Nadeau, and T. White at Office of Secretary
March 2, 2021	B24-0106 is referred to the Committee on Housing and Executive Administration
March 5, 2021	Notice of Intent to Act on B24-0106 Published in the *District of Columbia Register*
April 26, 2021	Notice of Public Hearing filed in the Office of the Secretary
April 30, 2021	Notice of Public Hearing Published in the District of Columbia Register
May 20, 2021	The Committee on Housing and Executive Administration holds a Public Hearing on B24-0106

B24-0119:

March 1, 2021	B24-0119 is introduced by Chairman Mendelson at Office of the Secretary
March 1, 2021	B24-0119 is referred to the Committee on Housing and Executive Administration with comments from the Committee on Judiciary and Public Safety
March 5, 2021	Notice of Intent to Act on B24-0119 is published in the *District of Columbia Register*

April 26, 2021	Notice of Public Hearing filed in the Office of the Secretary
April 30, 2021	Notice of Public Hearing Published in the *District of Columbia Register*
May 25, 2021	The Committee on Housing and Executive Administration holds a Public Hearing on B24-0119

V. POSITION OF THE EXECUTIVE

The Executive Testified on B24-0096 and B24-0106 as follows:

Polly Donaldson, *Director of the Department of Housing and Community Development (DHCD)*, testified in support of B24-096 but included several important considerations to be addressed. These considerations include, 1) that the legislation specify that the period after which eviction records are to be sealed as three *calendar* years, 2) that the data the agency receives as a result of all notices to vacate be filed with the Rent Administrator, 3) that the legislation will greatly increase the volume of notices-to-vacate process by the Rent Administrator and will also increase the requests for file retrieval, 4) that the legislation modifies its language in Section (a-1)(3) to read "[d]id not provide notice as required by this legislation" so that it is clear that notices to the tenant and the Rent Administrator are required, and 5) that the legislation insert "sealed eviction record" to the list of protected traits in subsection (a)(5) as well as subsection (b).

Regarding B24-106, Director Donaldson testified in support of the proposed legislation but expressed that the legislative provisions belong in the Rental Housing Act rather than in the Human Rights Act. While the proposed bill expands the rights and obligations of tenants and housing providers in general, the bill does not prohibit any conduct as discriminatory based on the protected traits under the Human Rights Act. The Rental Housing Act handles anti-discrimination provisions and regulates other tenant disclosures and is therefore the appropriate home for these protections.

Johanna Shreve, *Chief Tenant Advocate at the Office of the Tenant Advocate (OTA),* testified in support of both B24-96 and B24-106. Ms. Shreve argued that if the District were to enact B24-96, it would be following in the footsteps of several other jurisdictions that have enacted eviction record sealing laws such as in California, Colorado, Virginia and others. She expressed her appreciation that the legislation goes further than most other jurisdictions with record sealing laws by providing for automatic sealing in each instance of an eviction action after a maximum period of three years. Additionally, Ms. Shreve supported several new requirements in B24-96 including, 1) a 30-day notice

of eviction for nonpayment of rent, and 2) that the landlord must provide the tenant with a 30-day notice of intent to file the eviction claim. Finally, Ms. Shreve offered several recommendations to improve B24-96 including: 1) adding pandemic-related eviction records to the list of circumstances under which a tenant may move the Court to seal an eviction record, 2) require the Court to seal the records in circumstances listed in the new section 509(b) unless there is good cause not to do so, 3) allowing access to sealed eviction records for representation purposes, and 4) the lease clause whereupon the tenant waives the 30-day notice to vacate for nonpayment of rent be added to the list of prohibited lease clauses at Section 304 of Title 14 of the DCMR.

Regarding B24-106, the "Fair Tenant Screening Act of 2021", Ms. Shreve advocates for the bill as it addresses the unfairness in tenant screening practices which is crucial for achieving racial equity and for furthering fair housing. In addition to her general support for all components of the legislation, Ms. Shreve included a few recommendations: 1) that the Committee specify that if the applicant is approved, any unused portion of the fee must be applied towards the applicant's security deposit and that the purpose of the fee should be explained to the applicant, 2) increase conformity between the two bills, 3) to consider placing these provisions in the Human Rights Act, 4) that the Committee consider extending the time a tenant has to respond to a landlord's denial notice, and 5) that the bill be amended to require that the landlord notify the applicant via the applicant's preferred method of communication when the next unit is available.

Kate Vlach, *Attorney, Office of the Attorney General,* testified in support of both B24-96 and B24-106. Ms. Vlach began her testimony by expressing the OAG's appreciation for the Council's ongoing work to ensure equal housing opportunities in the District and looks forward to supporting and implementing the protections contained in both bills. On behalf of the OAG, she also expressed her belief that this legislation will play a significant role in advancing the District's antidiscrimination protections and removing unnecessary barriers that disproportionately harm voucher holders, tenants of color, female-headed households, older residents, and those with disabilities.

Regarding B24-106, Ms. Vlach offered the Attorney General's support for the legislation's prohibition on housing providers considering voucher holders' income and credit scores and commended the bill's prohibition on extraneous application fees. She proposed that the OAG participate in enforcing the bill's provisions and increase fines for pattern or practice violations under the Human Rights Act.

Regarding B24-96, Ms. Vlach delineated the crucial importance of eviction sealing in the civil rights puzzle. OAG supports the sealing of eviction records so lang as necessary information remains available for public interest purposes.

Finally, Ms. Vlach argued that B24-119, the "Evictions Protections and Tenant Screening Amendment Act of 2021", offers a critical safeguard for seniors and tenants with disabilities, who more often live in lower-rent subsidized housing or rent controlled housing.

The Executive Testified on B24-0119 as follows:

Polly Donaldson, *Director, Department of Housing and Community Development (DHCD)*, testified that DHCD finds much to like in B24-119 but argued that B24-119 lacks important details and requires technical corrections. For example, the bill does not specify any timeframes associated with when a housing provider must provide notice of an adverse action, how long a tenant must appeal the decision, and how long a housing provider must respond. She also noted that the bill is missing any detail on how the written adverse action notice must be delivered. Director Donaldson also recommended that for a complaint for possession to be filed with Superior Court. Finally, Director Donaldson asked that general notice and other provisions related to the regular business of tenants and landlords appear in the Rental Housing Act as well as suggesting that the DHCD work with the Council to craft a single bill that updates the eviction and application protections of District renters in a way that maximizes transparency, fairness to both tenants and landlords, and administrative efficiency.

Joel Cohn, *Legislative Director, Office of the Tenant Advocate,* testified on behalf of Chief Tenant Advocate, Johanna Shreve, and the OTA, strongly supporting the bill's provisions. Mr. Cohn commended the Council's inclusion of the provision requiring the landlord to provide the court with photographic evidence of service of a Court summons by posting and added that this provision should not be allowed to expire. Additionally, Mr. Cohn testified in support of certain advantages of placement within the Human Rights Act of 1977 rather than the Rental Housing Act of 1985. Finally, Mr. Cohn asked that B24-96, B24-106, and B24-119 be considered in tandem as the legislative process moves forward and specifically cited several advantages in B24-106's more comprehensive approach.

VI. SUMMARY OF TESTIMONY: Part 1

The Committee on Housing and Executive Administration held a public hearing on B24-096, the "Eviction Record Sealing Authority Amendment Act of 2021", and B24-106, the "Fair Tenant Screening Act of 2021", on May 20, 2021. The hearing testimony summarized below reflects opinions based upon the introduced version.

The following witnesses testified at the hearing:

Mel Zahnd & Emily Near, *Staff Attorney and Case Manager, Housing Law Unit, Legal Aid Society of the District of Columbia,* testified in support of both B24-96 and B24-106, emphasizing the importance of both bills amidst the crisis of the pandemic. Although each bill will address obstacles tenants confront in their search for new housing and provide tenants with the protection they need, Mel Zahnd and Emily Near suggested that B24-96 could be improved in several ways: 1) by amending it to require automatic sealing within 30 days for cases that resolve with a consent judgement, 2) by allowing attorneys representing tenants to access sealed records if they provide a written and signed statement explaining the purpose of their request, and 3) by providing more detailed requirements for valid 30-day notices related to nonpayment of rent. Finally, Legal Aid supports requiring all notices to be served on the Rent Administrator.

While Mel Zahn and Emily Near expressed their support in the provisions of B24-106, Legal Aid opposed the use of the Office of Human Rights as the sole mechanism for enforcement of this law. Additionally, they suggested in their testimony that B24-106 could be improved by creating a private right of action to empower prospective renters to enforce the law.

Finally, Legal Aid suggested that the Council should take this opportunity to strengthen requirements for all notices to vacate by requiring them to state clearly that tenants do not have to vacate the rental unit until and unless a court orders the tenant to do so.

Dylan Fine, *Intern, DC Voters for Animals,* testified in support of both B24-96 and B24-106. Dylan Fine expressed how stable housing is particularly elusive to low-income people with pets and that both bills would benefit pet guardians who live under the threat of unstable housing.

Dimitri McDaniel, *Staff Attorney, Housing Unit, Bread for the City Legal Clinic,* testified in support of B24-106, especially considering that Bread for the City's clients are predominantly Black and Brown and face discrimination, the bill begins to correct many of the wrongs that Black and Brown people face when engaging with institutions of authority. However, McDaniel expressed that Bread for the City believes that the bill could be improved by placing the burden of complying with the law in the landlord, rather than the background screening companies.

Fritz Mulhauser, *Co-Chair, Coalition Legal Committee, D.C. Open Government Coalition,* asked that regarding B24-96, that the pending bill be amended at markup to allow access to sealed court records for public purposes under proper safeguards and suggested language that could provide both record sealing and access.

Leigh Higgins, *Senior Attorney, D.C. Tenants' Rights Center,* testified in support of both B24-96 and B24-106, expressing appreciation for the bills' effort in protecting tenants from the long-term negative effects of an eviction filing. Leigh Higgins suggested that the bills require that a process server include photographic evidence of service along with the affidavit of service. Additionally, while the DC Tenants' Rights Center supports B24-96, they proposed a provision to permit

researchers and journalists investigating the workings of the court to gain access to all filed cases upon a proper and standardized application and also proposed two more categories of cases that should be included in the list of permissible reasons to seal a case: 1) circumstances connected to the COVID-19 pandemic, and 2) both parties in an eviction action should be able to agree to seal a case even if it doesn't meet any of the other criteria. Finally, they proposed that defendant tenants should be able to gain access to the entire sealed court file quickly and easily.

Leigh Higgins also suggested reconciling both bills with B24-119, the "Eviction Protections and Tenant Screening Amendment Act of 2021" which includes helpful provision prohibiting eviction filings for less than $600 or by a housing provider without a current basic business license.

Catherine Cone, *Counsel, Washington Lawyers' Committee for Civil Rights and Urban Affairs,* testified in strong support of B24-96 and B24-106, as both bills address important civil rights issues and advance the Council's commitment to racial equity and further fair housing in the District. Ms. Cone, on behalf of the Washington Lawyers' Committee offered two recommendations to strengthen B24-106: 1) ensure that the bill modifies the DC Human Rights Act rather than the Rental Housing Act, to provide tenant broader remedies including a private right of action, and 2) limit the information landlords can use to screen applicants in Section 227, as well as require background screening companies in Section 229 to certify their reports provide accurate information.

Nathaniel Aquino, *Senior Staff Attorney, Legal Counsel for the Elderly,* commended the Council for its efforts and consideration of B24-106 as the Act makes permanent numerous tenant protections. Additionally, Mr. Aquino provided a few ways to improve the "Fair Tenant Screening Act of 2021" by, 1) including a "first-in-time" rule, and 2) including a restriction on fees. Nathaniel Aquino testified in support of B24-96 but provided suggestions for improvement of the bill by allowing evictions to be sealed at the point of filing and adding exceptions to who may access the sealed records.

Wonyoung So, *Ph.D. student, Department of Urban Studies of Planning at MIT,* testified in full support of B24-96 as her research shows that landlords tend to maintain blanket policies of rejecting any tenant with an eviction record, even when the landlord has access to information that the eviction was dismissed or settled.

Brian McCabe, *Associate Professor of Sociology, Georgetown University,* underscored the importance of record sealing to protect tenant from unnecessary harm and housing instability but also made a plea to ensure the availability of these records for researchers to help inform and improve public policy.

Evan Loukadakis, *D.C. Association of Realtors,* raised several concerns regarding both bills that the DCAR believes would cause heavy, adverse effects on small housing providers.

Lauren Beebe King, Esq., *Housing Initiative Attorney, D.C. Bar Pro Bono Center,* encouraged the Council to pass B24-96 which addresses the additional and significant barrier to affordable housing that eviction records create.

Kate Coventry, *Senior Policy Analyst, DC Fiscal Policy Institute,* testified in strong support of B24-106 which ensures fairness in the tenant-screening processes which are rife with errors and urged the Committee to work with legal advocates.

Natasha Duarte, *Senior Policy Analyst, Upturn,* expressed support for B24-96 and urged the Council to require eviction record be automatically sealed at the point of filing, expressing that this change would fully realize the Council's goal of protecting residents from unproven allegations by landlords.

John Blake, *Staff Attorney, Tzedek DC,* supported the goals of both pieces of legislation and the efforts of the sponsors of these bills and urged the passage of both bills. Mr. Blake cited several other jurisdictions that have state laws that require automatic sealing of eviction records if the tenant prevails, or at least permit sealing by motion. Tzedek DC also recommended to amend B24-96 by providing sealing of eviction housing cases immediately upon filing.

Vivian Mercer, *Public Witness,* expressed her full support of both pieces of legislation by providing personal testimony as a victim of eviction.

Casey Wong, *Housing Advocacy Coordinator, Bread for the City,* presented anonymous testimony for a Bread for the City community member advocating for a a fair and complete eviction record sealing process. She urged the Committee to pass both bills so that an eviction does not create a lifetime of harm and housing insecurity.

Amber W. Harding, *Attorney, Washington Legal Clinic for the Homeless,* testified in support of both bills as they both establish a fairer system for renters in DC but argued that both bills mandate enforcement at the Office of Human Rights, not DHCD, because they are civil rights bills at their core.

VII. SUMMARY OF TESTIMONY: Part 2

The Committee on Housing and Executive Administration held a public hearing on B24-119, the "Eviction Protections and Tenant Screening Amendment Act of 2021", on May 25, 2021. The hearing testimony summarized below reflects opinions based upon the introduced version.

The following witnesses testified at the hearing:

Samantha Koshgarian, *Senior Staff Attorney, Housing Law Unit, Legal Aid Society of the District of Columbia,* expressed full support for B24-119 on behalf of the Legal Aid Society, as the legislation establishes strong tenant protections to ensure that no DC resident is displaced from their neighborhood, especially as the District begins to recover from the COVID-19 public health crisis. Ms. Koshgarian provided additional requirements that the Legal Aid Society believed would address significant issues including: 1) requiring complaints to be signed by a person with personal knowledge of the facts alleged; 2) requiring documentation of unpaid rent to be filed with complaints; and 3) making permanent and strengthening the requirement that landlords serve 30-day notices prior to filing nonpayment of rent complaints. Finally, the Legal Aid Society supports the provisions in Section 2 of B24-119 to require landlords to show proof of a current basic business license before suing a tenant for eviction, but also believes that a landlord should not be able to collect rent without a valid basic business license.

Leigh Higgins, *Senior Attorney, D.C. Tenants' Rights Center,* testified in support of reconciling B24-119 with B24-106 to protect prospective tenants in the District and specifically expressed support for the provision prohibiting the filing of an eviction complaint for less than $600 or without a current basic business license. Leigh Higgins testified in support of requiring photographic evidence of service and requiring that landlords provide pictures of when they post complaints on tenants' doors and provide that proof to the court. Additionally, the DC Tenants' Rights Center supports requiring a notice at least 30 days prior to filing.

Gwendolyn Washington, *Manager, Tenant Advocacy and Support Practice, Legal Counsel for the Elderly,* testified in support of B24-119 including several of its provisions and applauded the Council's recent efforts to seal eviction records. Ms. Washington urged the Council to make sure that eviction filings, especially ones that are meritless, end in favor of the

VIII. IMPACT ON EXISTING LAW

The proposed bill would make permanent several of the emergency and temporary provisions included in B24-0096 and B24-0106. Additionally, the proposed bill amends the Rental Housing Act of 1985 to serve a written notice on a tenant before evicting the tenant for nonpayment of rent, to require photographic evidence to be submitted to court if a summons is posted on the property, to require notice in a tenant's primary language if the housing provider knows a tenant speaks a covered language other than English, to prohibit a housing provider from filing a claim to recover possession of a rental unit for the nonpayment of rent unless the housing provider has provided the tenant with at least 30 days' written notice of its right to do so, to specify language that must be included in a nonpayment notice, to require the Court to dismiss claims for possession in certain circumstances, to prohibit eviction if the housing provider does not have a current business license, to require the Court to seal certain eviction records, to authorize the Court to seal certain evictions records upon motion by a defendant, to authorize the Court to release sealed eviction records under limited circumstances with privacy protections in place, to require disclosure of certain information prior to requesting information or fees for the purpose of screening a prospective tenant, to limit the fees charged to a prospective tenant, to require a refund of application fees under certain circumstances, and to prohibit the use of certain information for the purposes of adverse actions against a prospective tenant.

The proposed bill also amends the Human Rights Act of 1977 to describe types of actions that may be considered unlawful source of income discrimination, to prohibit discrimination in housing based on a person having a sealed eviction record, and to prohibit conditioning real estate transactions and other terms or conditions of housing on disclosure of a sealed eviction record.

IX. SECTION-BY-SECTION ANALYSIS

Section 1 States the short title of the "Fairness in Renting and Eviction Record Sealing Authority Amendment Act of 2021"

Section 2 Amends Section 16-501 of the District of Columbia Official Code by adding new subsections stipulating that the person aggrieved shall not file a complaint seeking restitution of possession for nonpayment of rent in an amount less than $600. Additionally, the person aggrieved shall not file a complaint seeking restitution of possession without a valid rental registration or claim of exemption as certified at the time of filing and documented at the initial hearing unless the person aggrieved is in

certain extenuating circumstances. The complaint will be dismissed if the proper documentation is not produced.

Section 3 Amends Title V of the Rental Housing Act of 1985 by stipulating that no tenant shall be evicted from a rental unit unless the tenant has been served with a written notice and served to the tenant and Rent Administrator and filed at least 30 days before the filing claim. A housing provider may recover possession of a rental unit when the tenant is violating an obligation of tenancy, other than nonpayment of rent and fails to correct the violation within 30 days after receiving notice from the housing provider. Additionally, no tenant shall be evicted in a situation where the housing provider does not have a current business license.

Section 3 of this proposed legislation also amends Title V of the Rental Housing Act of 1985 by adding new paragraphs stipulating that if a notice is served by posting a copy on the premises, a photograph of the posted notice must be submitted to the court and must have a readable timestamp that indicates the date and time of when the summons was posted. Additionally, if the landlord knows that the tenant speaks a primary language other than English or Spanish that is covered under § 2-1933, the landlord must provide the notice in that language. The claim will be dismissed by the Court if the proper notice is not provided.

Section 3 also includes new sections to the Rental Housing Act of 1985; sections 509 and 510. Section 509 regards the sealing of eviction court records while section 510 outlines tenant screening provisions. Section 509 stipulates that the Superior Court shall seal all court records relating to an eviction proceeding under several conditions including the sealing of a re. Additionally, certain parties are allowed to obtain copies of records sealed without the public unsealing of the records. Section 509 also provides examples of when sealed records can be opened but prohibits the re-release of any personally identifiable information without explicit permission from the court, used solely for research or administrative purposes but prohibits the use of the information as a basis for any action that directly affects any individual from the data. Furthermore, in the event where a housing provider intentionally bases an adverse action taken against a prospective tenant on an eviction court record that the housing provider knows is sealed, the prospective tenant may bring a civil action in the Superior Court within one year after the alleged violation and upon prevailing, is entitled to several reliefs.

Section 510 regarding tenant screening stipulates that before a tenant screening the tenant must be notified in writing or in a manner accessible to the prospective tenant and the notice shall include several components including, but not limited to, the types of information that will be accessed to conduct the screening, the criteria that

will result in denial of the application, and the amount and purpose of each fee or deposit that may be charged to a tenant or prospective tenant. This section further describes the application fee paid by the tenant for the screening (and refund circumstances), which is no more than the greater of $35 or the actual cost of obtaining information for screening a prospective tenant. Importantly, this section stipulates that a housing provider shall not make an inquiry about, require the disclosure of, or base an adverse action on several elements including, but not limited to, whether a previous action to recover possession from the prospective tenant occurred if the action did not result in a judgement for possession in favor of the housing provider or was filed more than three years ago. Additionally, a housing provider shall not base an adverse action solely on a prospective tenant's credit score. A housing provider must also provide a written notice if they do take an adverse action which will include the specific grounds for the adverse action among other inclusions. A prospective tenant also has the right to dispute the accuracy of any information upon which the housing provider relied in making their determination. Finally, any housing provider who knowingly violates any provision of this section shall be subject to a civil penalty for each violation not to exceed $1,000.

Section 4 Amends the section of The Human Rights Act of 1977 that outlines the intent of the Council in ending discrimination in the District of Columbia for any reason other than that of individual merit, including a working list of those situations in which discrimination is prohibited. Section 4 of the proposed legislation amends the Human Rights Act of 1977 to include "sealed eviction record" among the other criteria where discrimination is prohibited, protecting those prospective tenants with a prior rental history involving nonpayment or late payment of rent from discriminatory acts. Section 4 of the proposed legislation also outlines several rebuttal presumptions regarding unlawful discriminatory practices.

Regarding sealed eviction records, this section deems it unlawful discriminatory practice to do any of the outlined prohibited acts based on the actual knowledge or belief that a person has a sealed eviction record or based on information contained within a sealed eviction record. It is also deemed unlawful discriminatory practice to require a person to disclose a sealed eviction record under certain conditions.

Section 5 Provides the Fiscal Impact Statement.

Section 6 Provides the date on which the act will take effect following Mayoral approval.

X. COMMITTEE ACTION

The Committee on Housing and Executive Administration held an Additional Meeting on Wednesday, December 1 at 4:05pm to consider mark-up B24-0096, the "Eviction Record Sealing Authority Amendment Act of 2021", now entitled the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2021". A quorum was present, which included Chairperson Anita Bonds, Councilmember Elissa Silverman, and Councilmember Robert White. Chairperson Bonds provided an opening statement, introducing the amendment in the nature of a substitute to B24-0096, and summarized the provisions of and the need for the proposed legislation. Chairperson Bonds then moved for approval of the amendment and opened the floor for discussion.

During the discussion Councilmember Silverman stated that eviction protections and record sealing are racial equity issues, advocating for second chances for tenants and declaring that this bill is only the beginning of improving DC's rental market. She was especially glad to see that the bill will include a 30-day notice requirement, transparency provisions regarding the tenant screening process, and provisions giving limited access to sealed eviction records for researchers.

Councilmember Robert White applauded the bill's provisions, arguing that they address the affordable housing crisis prevalent in the District. He further cited anecdotal evidence stating that a tenant's top choice of housing is dramatically decreased due to an eviction record or filing, making the search for safe and affordable housing laborious and uncertain. Councilmember Robert White did inquire about the bill's need to stipulate the provision on line 145 which indicates that sealed records can be opened if the Superior Court sees a need to unseal a record. He questioned under what circumstances the Superior Court would need to unseal a record, to which Committee staff replied that they would reach out to the Courts before first reading to confirm their mutual understanding that this broad authority would not be used to undermine or contradict the intentions of the Council in enacting this legislation. Additionally, Councilmember Robert White expressed concern regarding the provision in Section 4, sub-section (h) line 292 which amends the Human Rights Act and stipulates that it is now unlawful discriminatory practice to discriminate against a prospective tenant with a history of a sealed eviction record or if a housing provider knows or believes that the prospective tenant may have a sealed eviction record. Councilmember Robert White argued that this may place a burden on the Office of Human Rights which has experienced recent instability. Committee staff addressed this concern by highlighting language from the FIS that the measure would not have an impact on OHR, stretch their capacity, or substantially add to their workload. Staff also pointed out that in OHR's testimony, OHR requested tenant screening requirements to be placed in the Rental Housing Act as opposed to the Human Rights Act. The Committee Print incorporates this suggested change by incorporating tenant screening in the Rental Housing Act. Committee staff indicated that OHR's concerns had been satisfied in the print. The bill does not broaden the scope of OHR's jurisdiction other than by adding sealed eviction record as an anti-discrimination term.

Both Councilmember Robert White and Councilmember Silverman expressed their interest and excitement in working with Chairperson Bonds and the Committee on Housing and Executive Administration to actualize this legislation.

Chairperson Bonds then moved for approval of the Committee Print and Report for the proposed legislation.

Committee members voted as follows:

Committee members voting in favor: Chairperson Bonds, Councilmember Silverman, and Councilmember Robert White.

The meeting adjourned at 4:31 p.m.

XI. ATTACHMENTS

A. Secretary's memo of referral
B. B24-0096 as Introduced
C. B24-0106 as Introduced
D. B24-0119 as Introduced
E. Racial Equity Impact Analysis for the "Fairness in Renting and Eviction Record Sealing Authority Amendment Act of 2021"
F. Fiscal Impact Statement for the "Fairness in Renting and Eviction Record Sealing Authority Amendment Act of 2021"
G. Committee Print for the "Fairness in Renting and Eviction Record Sealing Authority Amendment Act of 2021"

A

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : Nyasha Smith, Secretary to the Council

Date : Tuesday, March 2, 2021

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Tuesday, February 23, 2021. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Eviction Record Sealing Authority Amendment Act of 2021 ", B24-0096

INTRODUCED BY: Councilmember Cheh

CO-SPONSORED BY: Councilmember Allen

The Chairman is referring this legislation to the Committee on Housing and Executive Administration with comments from the Committee on Judiciary and Public Safety.

Attachment
cc: General Counsel
Budget Director
Legislative Services

B

Councilmember Mary Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Rental Housing Act of 1985 to serve a written notice to vacate on a tenant and the Rent Administrator before evicting the tenant for nonpayment of rent, to prohibit a housing provider from filing a claim to recover possession of a rental unit for the nonpayment of rent unless the housing provider has provided the tenant with at least 30 days' written notice of its intent to do so, to prohibit housing providers from filing claims to recover possession of a rental unit for the non-payment of rent unless providing the tenant 30 days' notice of their intent to do so; to require the Court to seal certain eviction records; to authorize the Court to seal certain evictions records upon motion by a defendant, to amend the Human Rights Act of 1977 to prohibit discrimination in housing based on a person having a sealed eviction record, and to prohibit conditioning real estate transactions and other terms or conditions of housing on disclosure of a sealed eviction record.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Eviction Record Sealing Authority Amendment Act of 2021".

Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 *et seq.*), is amended as follows:

(a) Section 501 (D.C. Official Code § 42-3505.01) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Striking the phrase "any reason other than the nonpayment of rent" and inserting the phrase "any reason" in its place.

(B) Striking the phrase "vacate for all reasons other than for nonpayment of rent" and inserting the phrase "vacate" in its place.

(2) A new subsection (a-1) is added to read as follows:

"(a-1) (1) A housing provider shall provide the tenant with notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit for the non-payment of rent at least 30 days before filing the claim.

"(2) Notice provided to a tenant under subsection (b) of this section shall not be considered notice of the housing provider's intent to file claim against a tenant as required under this subsection.

"(3) The court shall dismiss a claim brought by a housing provider to recover possession of a rental unit for the non-payment of rent where the housing provider:

"(A) Did not provide the tenant with notice as required by this subsection; or

"(B) Filed the claim to recover possession of the rental less than 30 days after providing the tenant with notice as required by this subsection."

(b) A new section 509 is added to read as follows:

"Sec. 509. Sealing of eviction court records.

"(a) The court shall seal all court records relating to an eviction proceeding within:

"(1) Thirty days after the final resolution of any proceeding not resulting in a judgment for possession in favor of the housing provider; or

"(2) Three years after the resolution of a housing provider's claim to recover possession of a rental unit from a tenant, regardless of the final disposition of the proceeding.

"(b) The court may seal court records relating to an eviction proceeding prior to the end of the time periods described in subsection (a) upon motion by a defendant tenant where the tenant demonstrates by a preponderance of the evidence that:

"(1) The judgment in favor of the housing provider is for an amount of $500 or less;

"(2) The tenant was evicted from a unit under any federal or District site-based housing subsidy program, or any federal or District tenant-based housing subsidy program;

"(3) The housing provider violated Part C of Title II of the District of Columbia Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.21 *et seq.*), in relation to the defendant tenant, and sought to recover possession of the tenant's rental unit in response to the tenant pursuing a remedy for the violation permitted under District law;

"(4) The housing provider violated 14 DCMR § 100 *et seq.* or 12G DCMR 100 *et seq.* in relation to the defendant tenant's unit;

"(5) The housing provider sued for eviction following an incident that would be a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking;

"(6) The housing provider violated the prohibition on retaliatory evictions under section 502 in the filing of the lawsuit to recover possession of the tenant's rental unit;

"(7) The parties entered into a settlement agreement that did not result in the housing provider recovering possession of the unit; or

"(8) The court determines that there are other grounds justifying such relief.

"(c) Upon written request, the Clerk of the Court shall provide access to a record sealed under this section to the defendant.".

Sec. 3. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 2-1401.01) is amended by striking the phrase "source of income" and inserting the phrase "source of income, sealed eviction record" in its place.

(b) Section 102 (D.C. Official Code § 2-1401.02) is amended by inserting a new paragraph (27A) to read as follows:

"(27A) "Sealed eviction record" means an eviction record that has been sealed pursuant to section 509 of The Rental Housing Act of 1985, as introduced on DATE 2019 (Bill 23-XXX).".

(c) Section 221 (D.C. Official Code § 2-1402.21) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "source of income" and inserting the phrase "source of income, sealed eviction record" in its place.

(2) A new subsection (g) is added to read as follows:

"(g) Sealed eviction records. —

"(1) It shall be an unlawful discriminatory practice to do any of the acts prohibited in subsection (a) or subsection (b) of this section based on the actual knowledge or belief that a person has a sealed eviction record.".

"(2) It shall be an unlawful discriminatory practice to require a person to disclose a sealed eviction record as a condition of:

"(A) Entering into any transaction in real property;

"(B) Inclusion of any clause, condition, or restriction in the terms of a transaction in real property;

"(C) Appraisal of a property, agreement to lend money, guarantee a loan, purchase a loan, accept residential real property as security for a loan, accept a deed of trust or

mortgage, or otherwise make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of real property; or to provide title or other insurance relating to ownership or use of any interest in real property;

"(D) Access to facilities, services, repairs, or improvements for a tenant or lessee; or

"(E) Access to, or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting residential real estate, including in terms or conditions of access, membership or participation in any such organization, service, or facility.".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

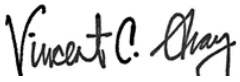
Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

C

Councilmember Brianne K. Nadeau

Councilmember Trayon White, Sr.



Councilmember Vincent C. Gray

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Human Rights Act of 1977 to prohibit housing providers from inquiring into the source of income and credit history of a prospective tenant; to require housing providers to notify prospective tenants of specific information before collecting any application fee; to strengthen penalties.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fair Tenant Screening Act of 2021".

Sec. 2. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq*.), is amended as follows:

(a) Section 102 (D.C. Official Code § 2-1401.02) is amended as follows:

(1) A new paragraph (2A) is added to read as follows:

"(2A) "Background screening report" means any report or other document that is used or expected to be used in whole or in part for the purpose of serving as a factor in establishing a person's eligibility for a rental unit, but not limited to a report that compiles, conveys, or interprets a prospective tenant's commercial records, financial records, credit history, court records, criminal records, employment history, or rental history.".

(2) A new paragraph (2B) is added to read as follows:

"(2B) "Background screening company" means a third-party vendor that creates, offers, or provides background screening services, including a background screening report, in exchange for compensation.". (3) Paragraph (14A) is redesignated as paragraph (14B)

(4) A new paragraph (14A) is added to read as follows:

"(14A) "Housing provider" shall have the same meaning as provided in section 103(15) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.03(15)).".

(5) Paragraph (27A) is redesignated as paragraph (27B)

(5) A new paragraph (27A) is added to read as follows:

"(27A) "Rental unit" shall have the same meaning as provided in section 103(33) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.03(33)).".

(b) Section 224 is amended as follows:

(1) Subsection (a) is amended by striking the phrase "Nothing in this chapter" and inserting the phrase "Nothing in this chapter except 221(a)(5)" in its place.

(2) Subsection (c) is amended by striking the phrase "Nothing in this chapter" and inserting the phrase "Nothing in this chapter except 221(a)(5)" in its place.

(3) Subsection (c)(1) is further amended by striking the phrase "prior to the sale" and inserting the phrase "prior to the sale; or".

(c) A new section 225 is added to read as follows:

"Sec. 225. Written screening and admission criteria.

"(a) Prior to obtaining any information from, or regarding, a prospective tenant or

collecting any application fee in connection with the rental of a rental unit, a housing provider shall provide the prospective tenant the following information in writing:

"(1) Specific information regarding the rental units available for rent from the housing provider, including:

"(A) An estimate, made to the best of the housing provider's ability at that time, of the approximate number of rental units of the type/bedroom size, and in the area or specific property, sought by the prospective tenant that are, or within 30 days will be, available to rent from that housing provider. The estimate shall include the approximate number of applications previously accepted and remaining under consideration for those units. If no units of the type sought by the prospective tenant are available, the housing provider shall disclose the approximate number of rental units of the type/bedroom size, and in the area or specific property, sought by the prospective tenant that are, or within six (6) months will be, available to rent, provided that the housing provider has a good faith basis to believe that the unit(s) will be available within six months. A good faith error by a housing provider in making an estimate under this paragraph shall not constitute a violation of this section;

"(B) The amount of rent and monthly fees the housing provider will charge and the deposits the housing provider will require for rental of a rental unit. If charges for water, heat, electricity, or amenities are not included in the rent, the housing provider also shall disclose this fact to the prospective tenant;

"(C) The date by which the housing provider will provide the prospective tenant with a response regarding his or her application to rent a rental unit, which response shall be reasonably prompt and no later than three business days after receipt of the prospective tenant's application; and

"(D) The process that the housing provider typically will follow in screening the prospective tenant, including whether the housing provider uses a background screening company, the name of the company and service(s) used to obtain a background screening report, whether the housing provider will consider credit reports, public records, court records, or criminal records, and whether it contacts employers, housing providers, or other references.

"(E) The eligibility criteria that the housing provider will apply in screening the prospective tenant, including the specific financial, employment, criminal, and rental history criteria, used in deciding whether to rent or lease to the prospective tenant.

"(2) General information about sections 225, 226, 227, 228, and 229 of this Act and the Fair Criminal Record Screening for Housing Act of 2016, effective April 7, 2017 (D.C. Law 21-259; D.C. Official Code § 42-354.01 *et seq.*), including:

"(A) The prospective tenant's rights under each law, including how to file a complaint pursuant to each law;

"(B) The prospective tenant's rights under section 226 to dispute the accuracy of any information provided to the housing provider by a third party; and

"(C) The prospective tenant's rights under section 226 to provide a statement and any supporting documentation of mitigating circumstances;

"(D) The prospective tenant's right to receive a copy of any background screening report prepared as a result of the application for the rental unit; and

"(E) The prospective tenant's right to receive a refund for any unused application fees."

"(b) A housing provider shall not knowingly misrepresent to a prospective tenant the current or future availability of a rental unit.

"(c) If a housing provider fails to conduct a screening of a prospective tenant for any reason, the housing provider shall refund any application fee paid by the prospective tenant within a reasonable time.".

(d) A new section 226 is added to read as follows:

"Sec. 226. Notice of denial of application.

"(a) Not later than the response date provided to the prospective tenant pursuant to section 225(a)(1)(C) of this Act, the housing provider shall provide the tenant with a written response to his or her application to rent a rental unit.

"(b) If the application of the prospective tenant is denied, the written response shall include--

"(1) the specific grounds that led to the denial;

"(2) a copy of any information obtained from a third party for the purpose of establishing the applicant's eligibility, or otherwise deciding whether, to rent the unit to the applicant;

"(3) a written itemized accounting of how the application fee was spent; and

"(4) a statement informing the prospective tenant of his or her right to dispute the accuracy of any information upon which the housing provider relied in making its determination as provided in subsection (c) of this section and/or to request reconsideration in light of mitigating circumstances, as provided in subsection (d) of this section.

"(c) Right to Obtain Background Screening Report.—

(1) A background screening company providing a background screening report on

a rental applicant may not prohibit a user of the report from disclosing the contents of the report to the rental applicant.

"(d) Right to Dispute Accuracy of Third Party Information.—

(1) Upon written notice of denial of an application to rent a rental unit, a prospective tenant may provide within 72 hours after the denial, and the housing provider reasonably shall consider, any evidence that information relied upon by the housing provider was inaccurate or incorrectly attributed to the prospective tenant or was based on screening criteria prohibited by District law.

(2) The housing provider shall consider and respond in writing to evidence provided pursuant to this subsection within 72 hours of the provision of this evidence.

"(e) Right to Request Reconsideration in Light of Mitigating Circumstances.—

"(1) Upon written notice of denial of an application to rent a rental unit, a prospective tenant may provide within 72 hours after denial of the application any evidence of mitigating circumstances relating to the grounds for denial to establish whether the applicant shows a readiness to satisfy the obligations of tenancy.

"(2) The housing provider shall consider and respond to evidence provided pursuant to this subsection within 72 hours of the provision of this evidence.

"(3) The housing provider shall offer to rent to the prospective tenant the next available rental unit if the evidence of mitigating circumstances would demonstrate to a reasonable person the qualifications and ability of the prospective tenant to satisfy the obligations of tenancy.

"(4) Evidence of mitigating circumstances may include, but shall not be limited to credible information showing:

"(A) a history of on-time rental payments by the prospective tenant that otherwise may not appear in a background check;

"(B) that a prior eviction of the prospective tenant based on nonpayment of rent was based, in whole or in part, on rent not owed by the prospective tenant;

"(C) new or increased income of the prospective tenant that is reliable and sufficient to cover rental costs;

"(D) completion by the prospective tenant of an educational program that will increase the prospective tenant's likelihood of receiving reliable and sufficient employment income;

"(E) letters of recommendation provided on behalf of the prospective tenant by employers or former housing providers;

"(F) changes in circumstances that would make prior lease violations by the prospective tenant less likely to reoccur;

"(G) that an alleged lease violation by the prospective tenant was related to domestic violence, as defined in D.C. Official Code § 4-551(1), including any basis protected under the Violence Against Women Act, a disability, or another protected trait;

"(H) that an alleged lease violation by the prospective tenant was related to the abuse, financial exploitation, and/or negligence of a vulnerable adult or elderly person, as provided in Chapter 9A of Title 22 of the D.C. Official Code (D.C. Official Code §§ 22-931-22-938); or

"(I) the factors set forth in the Fair Criminal Record Screening for Housing Act of 2016, effective April 7, 2017 (D.C. Law 21-259; D.C. Official Code § 42-3541.01 *et seq.*); or

"(J) Any other relevant information.".

(d) A new section 227 is added to read as follows:

"Sec. 227. Prohibited screening and admission criteria.

"(a) When evaluating a prospective tenant in connection with an application to rent a rental unit, a housing provider or background screening company shall not inquire into or consider:

"(1) An action to recover possession from the prospective tenant, if the action:

"(A) did not result in a judgment for possession in favor of the housing provider; or

"(B) was filed 2 or more years before the prospective tenant submits the application;

"(2) Any allegation of breach of a residential lease by the prospective tenant if the alleged breach--

"(A) stemmed from an incident that took place 2 or more years before the prospective tenant submits the application;

"(B) was related to the prospective tenant's or a household member's disability;

"(C) stemmed from an incident related to domestic violence, sexual assault, stalking, or dating violence, or from any evidence that the prospective tenant is or has been the victim of domestic violence, sexual assault, stalking, or dating violence, including but not limited to records of Civil or Criminal Protection Orders sought or obtained, or criminal matters in which the tenant is a witness; or

"(D) related to the prospective tenant or a household member being the victim of a crime in the unit subject to the residential lease.

"(3) Any action initiated by the prospective tenant against a housing provider, including but not limited to an action alleging failure to maintain a rental unit in compliance with applicable laws governing housing conditions;

"(4) Any factor not outlined in the eligibility criteria established by the housing provider and provided to the prospective tenant pursuant to section 225(a)(1)(E) of this Act.".

"(b) If a housing provider considers any allegation of a breach of a residential lease, the housing provider must allow the applicant to provide information that one or more of the circumstances in subsection 227(a)(2) applies. If the housing provider receives such information, the housing provider shall not consider the alleged breach of lease.

"(c) If the prospective tenant is seeking to rent with the assistance of an income-based subsidy, a housing provider or background screening company shall not inquire into or consider:

"(1) Any prior rental history of the prospective tenant involving nonpayment or late payment of rent, if the nonpayment or late payment of rent occurred prior to receipt of the income-based subsidy;

"(2) Income levels (other than whether or not the level is below a threshold as required by local or federal law), credit score, or lack of credit score; and

"(3) Any credit issues that arose prior to the receipt of the income-based subsidy.

"(d) If the prospective tenant is seeking to rent without the assistance of an income-based subsidy, a housing provider shall not deny the prospective tenant housing based solely on the fact that the prospective tenant does not have a credit score.

"(e) A housing provider shall not deny the prospective tenant housing based solely on a prospective tenant's credit score, although information within a credit or consumer report

directly relevant to whether the applicant shows a readiness to satisfy the obligations of tenancy can be relied upon by a housing provider.

"(f) No housing provider shall charge a greater amount for rent or additional fee to a prospective tenant seeking to rent with the assistance of an income-based subsidy than it would charge to a prospective tenant who does not have an income-based subsidy.

"(g) A housing provider shall not deny housing to a prospective tenant based on any of the prohibited screening and admission criteria described herein.".

(e) A new section 228 is added to read as follows:

"A housing provider must process applications in the order in which they were received, and shall offer the rental accommodation to the first prospective tenant who meets the selection criteria disclosed to the tenant pursuant to section 225."

(f) A new section 229 is added to read as follows:

"Sec. 229. Background screening companies.

"(a) Any background screening company providing tenant background screening services to a housing provider in the District of Columbia shall appoint and continuously maintain a registered agent for service of process.

"(b) Any background screening company shall make a record of the appointment of a registered agent pursuant to this section by filing a written statement with the Director of the Department of Housing and Community Development ("Director").

"(c) The registered agent shall be an individual who is a resident of the District of Columbia or an organization incorporated in the District of Columbia.

"(d) If the background screening company changes its registered agent, or if the name, address, or any other information about the agent changes after the background screening

company files a written statement with the Director pursuant to subsection (b) of this section, the background screening company shall, no later than 7 business days after the change, file a written statement notifying the Director of the change.

"(e) If the background screening company fails to appoint or maintain a registered agent in the District, or if the background screening company's registered agent in the District cannot with reasonable diligence be found, the Mayor shall serve as the agent of the background screening company upon whom any process, notice, or demand against the business entity may be served. All matters served upon the Mayor pursuant to this section shall be handled in the same manner as matters served upon the Mayor pursuant to D.C. Official Code § 29-104.12(d).

"(f) A background screening company shall not make any background screening report containing, conveying, interpreting, or incorporating into a score or recommendation, any of the following items of information:

"(1) Any arrest or other criminal record that did not result in a conviction;

"(2) Any criminal conviction, unless the housing provider certifies that it has made a conditional offer of housing to the applicant;

"(3) Any action to recover possession that constitutes "prohibited screening criteria" under subsection 227(a)(1);

"(4) Any action initiated by the prospective tenant against a housing provider.

"(g) A background screening company shall furnish with any background screening report a copy of all information, including court records and public records relied upon, conveyed, interpreted, or incorporated into a score or recommendation in the background screening report.

"(i) Any background screening company in violation of this section shall be subject to a penalty of $2,500 per violation.

"(j) Background screening companies shall be subject to the "prohibitions" in housing and commercial spaces under the D.C. Human Rights Act (D.C. Official Code § 2-1402.21).

"(k) Nothing in this section shall limit or restrict the type or amount of relief that an individual may be otherwise entitled to under this act."

(g) A new subsection 230 is added to read as follows:

"Sec. 230. Rulemaking.

"The Office of Human Rights shall promulgate rules within one year of the enactment of this act to regulate the implementation of sections 225, 226, 227, 228, and 229. These rules shall provide guidance as to how housing providers and background screening companies conduct individualized assessments of prospective tenants. Such rules shall provide guidance as to how to consider evidence of mitigating circumstances and the standards to apply in considering such evidence.".

(h) A new section 231 is added to read as follows:

"Sec. 231. Restrictions on Types and Amounts of Fees

"(a) Mandatory Fees Prohibited.—All mandatory fees other than security deposits and application fees pursuant to the restrictions below are prohibited.

"(b) Allowable Application Fees.—A housing provider shall not require a prospective tenant to pay an application fee greater than the actual cost to the housing provider to obtain a background screening report on the prospective tenant, as defined by the Human Rights Act of 1977, effective December 3, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.*), plus reasonable costs for the checking of rental references. Regardless of the cost of obtaining the

background screening report on the prospective tenant, an application fee shall be no more than $35. The housing provider shall provide the prospective tenant with a written receipt for any application fee paid and a copy of any background screening report obtained.

"(c) Mandatory Waiver of Application Fee.—

"(1) A housing provider shall waive any application fee if the prospective tenant submits a background screening report, as defined by the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), issued by a background screening company in compliance with the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), prepared not more than sixty (60) days prior to the application for the rental of a rental unit.

"(2) The housing provider may obtain an additional background report at its own expense, and shall not charge the prospective tenant any part of the cost of obtaining such report, but shall furnish a copy of such report to the prospective tenant. In no event shall a prospective tenant be required to pay for more than one background screening report.

"(d) Application Fee: When Prohibited; Refund.—

"(1) A housing provider shall not require payment of an application fee when the housing provider knows or should know that no rental units either are available at that time or will be available within a reasonable future time.

"(2) Notwithstanding subsection 231(d)(1), a housing provider may take an application fee if written notice is first provided to the prospective tenant, in compliance with subsection 225(a)(1), that no unit is currently available and indicating that one or more rental units will be available within the next six (6) months, provided the housing provider has a good faith basis to believe that the unit will be available within six months.

"(3) The housing provider shall refund in full any application fee paid by a prospective tenant not later than fourteen (14) days after a decision not to offer a vacant rental unit to the prospective tenant if the unit is filled before the housing provider obtains a background screening report on the prospective tenant, or the housing provider does not screen the prospective tenant for any reason.

"(4) A housing provider shall refund any unused portion of any application fee paid by a prospective tenant not later than fourteen (14) days of a decision about whether to offer the vacant rental unit to the prospective tenant.

"(e) The housing provider must give the applicant a reasonable time to pay all allowable fees. The District of Columbia Housing Authority shall establish a schedule for a reasonable time period for the payment of allowable fees by any federal or local subsidy programs providing rental payment assistance."

(f) Section 313(a)(1) (D.C. Official Code 2-1403.13(a)(1)) is amended by adding a new Paragraph (a)(4) to read as follows:

"(4) If, at the conclusion of the hearing, the Commission determines that a respondent has violated section 225, 226, 227, 228, or 229, the Commission shall require respondent to pay, in addition to the penalties set forth in paragraph (a)(1) of this subsection, civil penalties, half of which shall be deposited in the General Fund and no less than half of which shall be awarded to the complainant, according to the following schedule:

"(i) For a housing provider that owns or leases 1 to 10 rental units, a fine of up to $1,000;

"(ii) For a housing provider that owns or leases 11 to 19 rental units, a fine of up to $2,500;

"(iii) For a housing provider that owns or leases 20 or more rental units, a fine of up to $5,000; and

"(iv) For a background screening company, a fine of up to $5,000.

Sec. 3. Affirmative defense

"(a)A housing provider may raise an affirmative defense to violations of this Act if its actions were taken in good faith in reliance upon information provided by a background screening company that the housing provider reasonably believed complied with the provisions of this Act. For this defense to apply, the conduct alleged to be in violation of this Act must be purely unintentional and have occurred despite the housing provider's reasonable and appropriate efforts to avoid any such violation.

Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

D

Chairman Phil Mendelson

A BILL

IN COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Section 16-1501 of the District of Columbia Official Code to provide that the person aggrieved shall not file a complaint seeking restitution of possession for nonpayment of rent in an amount less than $600 and to provide that person aggrieved shall not file a complaint seeking restitution of possession without a current rental housing license; and to amend the Rental Housing Act of 1985 to provide that a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on certain criteria, to require a housing provider to provide written notice to a prospective tenant of the housing provider's basis for taking adverse action against the prospective tenant, and to provide the tenant an opportunity to dispute the information forming the basis of the housing provider's adverse action.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Eviction Protections and Tenant Screening Amendment Act of 2021".

Sec. 2. Section 16-1501 of the District of Columbia Official Code is amended by adding new subsections (c) and (d) to read as follows:

"(c) The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section for nonpayment of rent in an amount less than $600; except, that the person aggrieved may file a complaint to recover the amount owed.

"(d)(1) The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section without a current license for rental housing issued pursuant to D.C. Official Code § 47-2828(c)(1).

"(2) The person aggrieved shall provide documentation of a current license for rental housing under paragraph (1) at the time of filing.".

Sec. 3. Title V of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.01 et seq.), is amended by adding a new section 510 to read as follows:

"Sec. 510. Tenant screening.

"(a) Before requesting any information from a prospective tenant as a part of tenant screening, a housing provider shall first notify the prospective tenant in writing, or by posting in a manner accessible to prospective tenants:

"(1) The types of information that will be accessed to conduct a tenant screening;

"(2) The criteria that may result in denial of the application; and

"(3) If a credit or consumer report is used, the name and contact information of the credit or consumer reporting agency and a statement of the prospective tenant's rights to obtain a free copy of the credit or consumer report in the event of a denial or other adverse action.

"(b) For the purposes of tenant screening, a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on:

"(1) Whether a previous action to recover possession from the prospective tenant occurred if the action:

"(A) Did not result in a judgment for possession in favor of the housing

provider; or

"(B) Was filed 3 or more years ago.

"(2) Any allegation of a breach of lease by the prospective tenant if the alleged breach:

"(A) Stemmed from an incident that the prospective tenant demonstrates would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"(B) Took place 3 or more years ago.

"(c) A housing provider shall not base an adverse action solely on a prospective tenant's credit score, although information within a credit or consumer report directly relevant to fitness as a tenant can be relied upon by a housing provider.

"(d) If a housing provider takes an adverse action, he or she shall provide a written notice of the adverse action to the prospective tenant that shall include:

"(1) The specific grounds for the adverse action;

"(2) A copy or summary of any information obtained from a third-party that formed a basis for the adverse action; and

"(3) A statement informing the prospective tenant of his or her right to dispute the accuracy of any information upon which the housing provider relied in making his or her determination.

"(e) After receipt of a notice of an adverse action, a prospective tenant may provide to the housing provider any evidence that information relied upon by the housing provider is:

"(A) Inaccurate or incorrectly attributed to the prospective tenant; or

"(B) Based upon prohibited criteria under subsection (b) or subsection (c) of this section.

"(2) The housing provider shall provide a written response, which may be by mail, electronic mail, or in person, to the prospective tenant with respect to any information provided under this subsection within 30 business days after receipt of the information from the prospective tenant.

"(3) Nothing in this subsection shall be construed to prohibit the housing provider from leasing a housing rental unit to other prospective tenants.

"(f) Any housing provider who knowingly violates any provision of this section, or any rules issued to implement this section, shall be subject to a civil penalty for each violation not to exceed $1,000.

"(g) For the purposes of this section, the term:

"(1) "Adverse action" means:

"(A) Denial of a prospective tenant's rental application; or

"(B) Approval of a prospective tenant's rental application, subject to terms or conditions different and less favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to a prospective tenant.

"(2) "Tenant screening" means any process used by a housing provider to evaluate the fitness of a prospective tenant.".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved

October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973, (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

E

BILL 24-0096

RACIAL EQUITY IMPACT ASSESSMENT

EVICTION RECORD SEALING AUTHORITY AND FAIRNESS IN RENTING AMENDMENT ACT OF 2021

TO: The Honorable Phil Mendelson, Chairman, Council of the District of Columbia

FROM: Dr. Brian McClure, Director, Council Office of Racial Equity

DATE: November 30, 2021

COMMITTEE

Committee on Housing and Executive Administration

BILL SUMMARY

Bill 24-0096 updates the criteria and process for eviction filings, creates rules for sealing public eviction records, clarifies when and how eviction records can be released for research purposes, increases the transparency of the tenant screening process, and updates what counts as illegal discrimination in the District of Columbia.

CONCLUSION

Bill 24-0096 takes important and practical steps to improve housing outcomes for Black residents, Indigenous residents, and other residents of color in the District of Columbia.

However, the bill misses an opportunity to fundamentally shift the power imbalance between landlords and tenants. This imbalance disproportionately affects the District's Black residents, Indigenous residents, and other residents of color.

Content Warning: This document is a Racial Equity Impact Assessment, a careful and organized examination of how Bill 24-0096 will affect different racial and ethnic groups. We hope that this assessment sparks a conversation that is brave, empathetic, thoughtful, and open-minded.

The following content touches on racism, housing instability, evictions, domestic violence, sexual assault, death, and racial discrimination in housing. We understand that some or all these issues may trigger a strong emotional response. We encourage you to use this knowledge in the way that is most helpful to you.

BACKGROUND

The Committee Print for Bill 24-0096 includes concepts from three separate bills:

- Bill 24-0096 was introduced as the **Eviction Record Sealing Authority Amendment Act of 2021** on February 23, 2021 by Councilmember Mary Cheh. The public hearing was held on May 20, 2021.
- Bill 24-0106 was introduced as the **Fair Tenant Screening Act of 2021** on February 24, 2021 by Councilmembers Vincent Gray, Brianne Nadeau, and Trayon White. The public hearing was also held on May 20, 2021.
- Bill 24-0119 was introduced as the **Eviction Protections and Tenant Screening Amendment Act of 2021** on March 1, 2021 by Chairman Phil Mendelson. The public hearing was held on May 25, 2021.

The Committee Print pulls from these bills to permanently amend the DC Code.[1] At a high level, this bill:

- specifies that eviction filings for unpaid rent cannot be for less than $600
- requires that landlords have a valid rental registration and current license for rental housing to file
- updates the eviction filing process
- creates rules for when public eviction records will be sealed
- clarifies when and how eviction records can be released for research purposes
- increases the transparency of the tenant screening process
- updates what counts as illegal discrimination in the District of Columbia.

Each of the bill's provisions are listed and discussed in the assessment's Racial Equity Impact section.

Renting in DC

Redlining[2] and racial covenants[3] on top of years of restrictions on wealth building opportunities[4] have led to dramatic inequities in homeownership rates across racial groups. In the District, 50% of white households own their home, while 35% of Black households and 32% of Latinx households do.[5]

Racial inequities in homeownership mean that households of color[6] are more likely to rent—and when they rent, their rent is more likely to be unaffordable. One metric for affordability is *rent burden*, which measures what percentage of a household's income goes to rent. The higher the percentage, the higher the burden.[7]

Black and Hispanic households experience the highest rates of rent burden in the District, with more than one in two households spending over 30% of their income on rent[8] (Figure 1). Racial inequities in education,[9] hiring discrimination,[10] job segregation,[11] wealth inequities, and income inequities all contribute to the inequities in rent burden.[12]

[1] Bill 24-0096 is based on the Fairness in Renting Amendment Act, in effect on an emergency and temporary basis in the District.
[2] Mapping Segregation in D.C., Sarah Shoenfeld, DC Policy Center.
[3] Ibid.
[4] The Color of Wealth in the Nation's Capital, The Urban Institute, November 2016.
[5] Homeownership Rates by Race in the District of Columbia, National Equity Atlas, 2019.
[6] When CORE refers to "communities of color," we are referring to Black, Indigenous, Latinx, Asian American, Pacific Islander, and Native Hawaiian populations. We do so while acknowledging that each community of color has a unique history and experience of racism in the United States, and in particularly, in the District of Columbia.
[7] The affordability standard of "30% of income on rent" has been critiqued.
[8] Tabulations of US Census Bureau, 2016 American Community Survey 1-year Estimates using the Missouri Data Center MABLE/Geocorr14, Joint Center for Housing Studies of Harvard University.
[9] DC Racial Equity Profile, D.C. Policy Center and Council Office of Racial Equity.
[10] Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination, Marianne Bertrand and Sendhil Mullainathan, National Bureau of Economic Research.
[11] DC Racial Equity Profile, D.C. Policy Center and Council Office of Racial Equity.
[12] Ibid.

FIGURE 1 **Black and Hispanic households have the highest rates of rent burden in the District. (2016)**

RACE AND ETHNICITY	SHARE OF HOUSEHOLDS SEVERELY RENT BURDENED* These households pay more than 50% of their income on housing.	SHARE OF HOUSEHOLDS MODERATELY RENT BURDENED These households pay 30-50% of their income on housing.	TOTAL SHARE OF DC HOUSEHOLDS WITH RENT BURDEN
WHITE	17.3%	17.2%	34.5%
ASIAN/OTHER	19%	26.4%	45.4%
BLACK	34.9%	18.3%	53.2%
HISPANIC**	38.6%	19.5%	58.1%

*Households with zero or negative incomes are counted as severely burdened, while households paying no cash rent are counted as without burden.
**In this chart, Hispanic households may be of any race. Black, Asian/Other, and white households are non-Hispanic. Unfortunately, these tabulations did not make specific data available about Indigenous populations.

Evictions

About 32,000 evictions are filed each year in DC (when a moratorium is not in place). However, some eviction filings are against the same tenant, meaning that "this process impacts nearly 18,000 unique District households, or about 11 percent of renter households."[13]

Most evictions are filed for unpaid rent (93%).[14] However, eviction filings can be made against a tenant incorrectly, unfairly, in opposition to a tenant exercising their rights, and for reasons outside of the tenant's control. Testimony from the Office of the Attorney General for the District noted that eviction filings can be made in error, made illegally "to evict survivors who seek police protection from intimate partner violence," and made "to evict voucher holders when the District's portion of their rental payments were delayed."[15]

Eviction is a process that begins with notifying the tenant and filing with the court. Notably, many evictions do not end in a family being removed from their home. This event is called an "executed eviction" and in 2018, "5.5% of eviction filings resulted in a formal eviction" in DC.[16] However, as the Georgetown report notes, "many renters are forced from their homes in ways *not* captured by formal court records."[17] Eviction filings and executed evictions likely underestimate the dynamics of the rental housing market.

In addition, data reveals how evictions and issues related to evictions are also economic and racial justice issues. A Georgetown University report both highlighted and underscored this point, noting that "the stark racialized geography of evictions in the District highlights a remarkable overlap between residential segregation and housing instability. Eviction filings are spatially concentrated in majority Black neighborhoods with the highest poverty rates in the city.[18]

[13] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.
[14] Ibid.
[15] Vlach, Kate. Public Hearing on B24-96 & B24-106, § Committee on Housing and Executive Administration (2021).
[16] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.
[17] Ibid.
[18] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability." Georgetown University, Fall 2020.

In 2018, over 50% of evictions in DC were filed in Wards 7 and 8,[19] where over 90% of the residents are Black.[20] This is despite renters being evenly distributed across wards. Further, Wards 7 and 8 "account for only one-quarter of renter-occupied households in the District, [but] account for nearly 57 percent of eviction filings."[21]

The Aftermath of Evictions

The consequences of eviction are broad and deep. Facing an eviction can affect almost every aspect of a person's life—housing, physical and mental health, education, employment, and personal finances. And many of the consequences can occur even if the eviction doesn't—an eviction threat or filing alone can have consequences. Research has demonstrated the impact of housing instability on the many life outcomes listed below (outcomes without a footnote stem from the footnote they come before):

- material hardship
- depression
- worse health for parents and children
- parenting stress[22]
- negative birth outcomes[23]
- mental health hospitalizations[24]
- mortality[25]
- homelessness
- long-term residential instability
- emergency room use[26]
- poverty[27]
- likelihood of suicide[28]
- decreased credit access[29]
- forced moves into substandard housing.[30]

A list does not do justice to the trauma of each of these consequences.

For this measure, it's critically important to understand that "tenant advocates call [an eviction] a Scarlet E."[31] As the New York Times reported, "eviction cases are a stubborn blot on any renter's history. They are nearly impossible to scrub away, even if the tenant made good on the obligations or it was only a scare tactic by an aggressive landlord." Researchers McCabe and Rosen note that "public records follow tenants through their residential records and often through their credit records, and have been shown to have a negative impact on their future housing opportunities."[32]

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[19] Ibid.
[20] DC Health Matters. "DC Health Matters :: Demographics :: Ward :: Ward 7."
[21] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.
[22] Desmond, Matthew, and Rachel Tolbert Kimbro. "Eviction's Fallout: Housing, Hardship, and Health." *Social Forces* 94, no. 1 (September 1, 2015): 295–324.
[23] Khadka, Aayush, Günther Fink, Ashley Gromis, and Margaret McConnell. "In Utero Exposure to Threat of Evictions and Preterm Birth: Evidence from the United States." *Health Services Research* 55, no. S2 (2020): 823–32.
[24] Vásquez-Vera, Hugo, Laia Palència, Ingrid Magna, Carlos Mena, Jaime Neira, and Carme Borrell. "The Threat of Home Eviction and Its Effects on Health through the Equity Lens: A Systematic Review." *Social Science & Medicine* 175 (February 1, 2017): 199–208.
[25] Rojas, Yerko. "Evictions and Short-Term All-Cause Mortality: A 3-Year Follow-up Study of a Middle-Aged Swedish Population." *International Journal of Public Health* 62, no. 3 (April 1, 2017): 343–51. https://doi.org/10.1007/s00038-016-0931-8.
[26] Collinson, Robert, and Davin Reed. "The Effects of Evictions on Low-Income Households," December 2018, 82.
[27] Desmond, Matthew. "Eviction and the Reproduction of Urban Poverty." *American Journal of Sociology*, July 2012, 46.
[28] Serby, Michael J., David Brody, Shetal Amin, and Philip Yanowitch. "Eviction as a Risk Factor for Suicide." *Psychiatric Services* 57, no. 2 (February 1, 2006): 273-b.
[29] Humphries, John Eric, Nicholas S. Mader, Daniel I. Tannenbaum, and Winnie L. van Dijk. "Does Eviction Cause Poverty? Quasi-Experimental Evidence from Cook County, IL." Working Paper. National Bureau of Economic Research, August 2019.
[30] Desmond, Matthew, Carl Gershenson, and Barbara Kiviat. "Forced Relocation and Residential Instability among Urban Renters." *Social Service Review*, September 26, 2015.
[31] Goldstein, Matthew. "The Stigma of a Scarlet E." *The New York Times*, August 9, 2021, sec. Business. "Scarlet E" is a reference to the term "Scarlet Letter" which describes the practice of brazenly identifying (and shaming) someone publicly for an event in their past.
[32] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.

RACIAL EQUITY IMPACTS

This bill includes many parts (called provisions) over fifteen pages. To share the racial equity impact of each provision as clearly as possible, CORE rewrote the bill's provisions in plain language, organized provisions into tables by topic and what part of the DC Code they relate to, and included a symbol to indicate the racial equity impact at a glance. A symbol key is below.

 **POTENTIAL TO EXACERBATE**

 **MAINTAINS THE STATUS QUO**

 **POTENTIAL TO IMPROVE**

 **INCONCLUSIVE IMPACT**

While these symbols are meant to highlight key points of our analysis, they are not a substitute for reading the racial equity impact summaries. Finally, the tables below explain the bill in a shortened, more plain language format for discussion. These tables are not a substitute for the law.

AMENDMENTS TO SECTION 16-1501 (FORCIBLE ENTRY AND DETAINER)

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
Landlords cannot file an eviction if the tenant owes less than $600 in rent.	In 2018, "about 12 percent of households summoned to court owed less than $600."[33] Researchers Brian McCabe and Eva Rosen suggest that "banning evictions below this amount, or a similar threshold, would keep a substantial number of cases out of court to be resolved independently by the parties involved."[34] Given that Black residents are disproportionately affected by evictions, this provision **has the potential to improve housing outcomes**[35] for Black residents, Indigenous residents, and other residents of color by preventing an eviction filing in the first place. However, this threshold may also have unintended consequences. It may encourage landlords to wait until slightly more than $600 in rent is owed to file an eviction or use other renter intimidation tactics outside the court's view. The Committee Print does not include active monitoring of eviction filing data to alert policymakers to new filing trends.	

[33] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability." Georgetown University, Fall 2020.
[34] Ibid.
[35] "Housing outcomes" will be used throughout this assessments Racial Equity Impact section. For example, housing outcomes can include housing stability, rent burden, housing choice (the number of housing options available to a resident), housing safety and quality (the presence of safety features like smoke alarms), and housing discrimination.

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
Landlords must have a valid rental registration (or claim of exemption) and a current license for rental housing to file an eviction. Landlords must present the rental housing license when they file.	It is difficult to know how many units are rented without a license and who most often lives in an illegal rental. However, the consequences of even one illegal rental can be deadly. In 2019, a nine-year-old boy and 40-year-old man died when an illegally rented rowhouse caught fire. According to the Washington Post, "officials said that there were no working smoke detectors and that bars covered windows and doors."[36] These issues would have been inspected[37] and caught if the landlord had a valid rental housing business license.[38] This provision won't have any effect on licensed and registered landlords who want to file an eviction. However, it's not clear how unlicensed landlords would react. It could encourage them to get a license—which might improve housing safety for Black District residents, given that "eviction filings are spatially concentrated in majority Black neighborhoods."[39] It is also possible that unlicensed landlords confronted with this requirement choose not to obtain a license (which can cost at least $200 to over $900 depending on the number of units),[40] not file an eviction, and opt for another tactic to receive rent or evict the tenant. Given this uncertainty, **the racial equity impact is inconclusive.**	

EVICTION PROCESS AMENDMENTS TO THE RENTAL HOUSING ACT OF 1985

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
A tenant cannot be evicted if they pay rent, even if their lease has ended.	Almost all evictions are filed because of unpaid rent.[41] It is unclear how many evictions (if any) have occurred after a lease ends but while a tenant is paying rent. Without knowing the specific circumstances where this provision would apply (such as a month to month lease), it is difficult to determine the racial equity impact. **Therefore, the racial equity impact is inconclusive.**	

[36] Hermann, Peter, and Laurel Demkovich. "D.C. Mayor Asks Federal Prosecutors to Launch Criminal Investigation into Deadly Fire." *Washington Post*, August 21, 2019.
[37] Basic Business License Checklist, Department of Consumer and Regulatory Affairs, 2020.
[38] "Rental Housing Business | DCRA."
[39] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.
[40] "Rental Housing Business | DCRA."
[41] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
Landlords cannot file an eviction because a tenant does not pay a late fee.	Almost all evictions are filed because of unpaid rent.[42] It is unclear how many evictions (if any) have occurred because of an unpaid late fee. However, given that residents of color are more likely to be rent burdened in the District, they may also face late fees at disproportionate rates. Under these assumptions, **this provision has the potential to improve housing outcomes** for residents of color.	⇢
Landlords must notify a tenant in writing before an eviction for any reason. Landlords must notify a tenant in writing that they (the landlord) plan to file an eviction for unpaid rent at least 30 days before filing. If the written notification is posted on the rental unit, landlords must send the court a photograph of the posted notice. The photo must include the date and time it was posted.	Before an eviction is filed with the courts, landlords must alert the tenants 30 days in advance. However, in practice, DC law allows landlords to "write…a waiver of this right to receive a thirty-day notice [into a rental lease]." This means that cases can be—and are—filed directly with the court without the tenant knowing first.[43] This provision does not reduce the threat of eviction (which has consequences including prompting the tenant to move out)[44] but it may reduce the number of eviction filings in the District, which **has the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color. Almost 7 in 10 District eviction filings for unpaid rent are dismissed between the filing and the scheduled hearing.[45] Filings are dismissed because the tenant pays the rent owed, the case isn't strong enough, the landlord drops the suit, or the landlord does not show up.[46] Ensuring tenants have 30 days' notice before an eviction filing may help tenants be alerted to and resolve the issue before their landlord files for eviction.	⇢
If the landlord knows that a tenant's first language is not English or Spanish, the landlord must alert	In addition to English and Spanish, Chinese, Vietnamese, Korean, and Amharic are languages commonly spoken in the District.[47] By requiring landlords to provide notice in a tenant's first language, this provision **has the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color.	⇢

[42] Ibid.
[43] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.
[44] Himmelstein, Grace, and Matthew Desmond. "Eviction and Health: A Vicious Cycle Exacerbated By A Pandemic | Health Affairs Brief." Accessed November 28, 2021.
[45] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.
[46] Ibid.
[47] "Language Access | DCRA." Accessed November 28, 2021.

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
the tenant in their language.		
Written notice to a tenant must include critical information such as the amount of rent owed, a tenant's rights, and phone numbers for legal services.	Specifically, the written notice must include the amount of unpaid rent, a ledger showing what was owed and when, an explanation that the tenant has the right to remain in the unit if the unpaid amount is paid, a reminder that the tenant has the right to defend themselves in court and that only a court can order an eviction (not their landlord), and phone numbers for free legal services. According to researchers Brian McCabe and Eva Rosen, "more than 98 percent of tenants in the District served an eviction filing navigate the process without the formal assistance of an attorney." They continue, "there is a consensus among scholars and advocates that tenants fare better with the assistance of legal counsel."[48] While this provision does not create a Right to Counsel for those facing evictions, it provides clear and up front recommendations of who a tenant can call for help, which has the **potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color.	
The DC Superior Court (which handles evictions) must dismiss eviction filings if the landlord does not follow all required steps.	Specifically, the DC Superior Court will dismiss an eviction filing if the landlord 1) did not give their tenant the required notice as described above 2) filed the eviction claim fewer than 30 days after they alerted the tenant, or 3) did not submit a photograph as described. As explained above, ensuring tenants have 30 days' notice may help tenants be alerted to and resolve the issue before their landlord files for eviction. Dismissing cases that do not follow this law **has the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color.	
Evictions are not allowed while a landlord does not have a valid rental registration (or claim of exemption) and a current business license.	See the analysis of the second provision under Amendments to Section 16-1501 (Forcible Entry and Detainer). **The racial equity impact is inconclusive.**	

[48] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
Notices for eviction for all reasons other than unpaid rent must be sent to both the tenant and the Rent Administrator.	"Rent Administrator" is a role within the Department of Housing and Community Development (DHCD) which oversees rent control and interprets related policy and legislation.[49] The Rent Administrator also receives the same notices that tenants receive when they are evicted for a reason other than nonpayment of rent. As former DHCD Director Polly Donaldson testified, this step provides a government check on the eviction process, an opportunity to share public information about evictions with tenants, and a chance to target eviction prevention services.[50] However, this provision **maintains the status quo of racial inequity** by reinforcing that notices to evict due to unpaid rent do not need to be sent to the Rent Administrator. This is despite the value that the Rent Administrator could provide for the most frequent type of eviction.	

EVICTION SEALING AMENDMENTS TO THE RENTAL HOUSING ACT OF 1985

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
The DC Superior Court must seal eviction records 30 days after a case ends if the landlord does not win or 3 years after a case ends if the landlord does win. The DC Superior Court must seal eviction records meeting the above requirements for evictions filed before March 11, 2020 by January 1, 2021.	As the Center for American Progress states, "eviction record sealing, in combination with additional tenant protections and reforms, would greatly improve access to safe and affordable housing, especially for the people most often forced to the margins of society."[51] It's important to clarify what is meant by "sealing an eviction record." While eviction records in DC are published online by the court, imagine all eviction filings are represented by envelopes and court proceedings are described on papers inside each envelope. If this bill passed and an eviction is sealed, the goal would be for the public not be able to see the envelope at all—as if the eviction never existed. Unfortunately, this is not how the bill would play out in practice. After an eviction filing is published on the Court's website, it—like many things on the internet—is almost impossible to erase. McCabe and Rosen describe, "in order for record sealing to be effective, it needs to occur at the moment of filing—not later—since third-party companies frequently scrape these records and sell the data to property owners for [tenant] screening purposes. Credit reporting companies also frequently use the data, adversely affecting	

[49] "Mayor Bowser Announces Appointment of Lauren Pair as the DC Rent Administrator | DHCD," April 14, 2017.
[50] Donaldson, Polly. Public Hearing on B24-96 & B24-106, § Committee on Housing and Executive Administration (2021).
[51] Lake, Jaboa, and Leni Tupper. "Eviction Record Expungement Can Remove Barriers to Stable Housing." *Center for American Progress* (blog).

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
The DC Superior Court must seal eviction records if the tenant requests a sealing with evidence of: an eviction for less than $600 of unpaid rent, eviction from a site-based or tenant-based housing subsidy program, the eviction violating Section 502 of the Rental Housing Act (Retaliatory Action) or Section 261 of the Human Rights Act (coercion and retaliation), the landlord not addressing a violation of 14 DCMR 100 in the tenant's unit, the filing was due to a defense against District or federal law about domestic violence, dating violence, sexual assault, or stalking, a settlement in which the landlord did not get the unit back, or if the Superior Court decides records should be sealed.	tenants' credit reports. Even in places where record sealing exists, a delay in the sealing often allows outside companies [to] obtain these records in the interim."[52] Kate Coventry of the DC Fiscal Policy Institute testified that over 2,000 third-party companies provide screening data to landlords. For a tenant to remove an eviction filing, they would need to appeal it with each of the thousands of companies.[53] As Natasha Duarte of Upturn (a social justice and technology nonprofit) testified, "trying to suppress records once they've been made public is incredibly difficult and often impossible."[54] This means that the automatic sealing of evictions filed before March 11, 2020 and the ability for tenants to request sealings may appear positive, but will likely have little to no positive impact for residents of color. Immediately sealing records may have unintended consequences for on-the-spot legal advice from advocates positioned at the courthouse. However, it is not entirely clear if this must be the case. What we do definitively know though, is that delaying a sealing is the same as not sealing at all. For these reasons, this provision **maintains the status quo of racial inequity** in the District of Columbia. For this provision to realize its goal, eviction filings would need to be sealed immediately upon filing. This is something California does.[55] It is also possible to exclude court records from the tenant screening process entirely, as Amber Harding of The Washington Legal Clinic for the Homeless testified.[56] Finally, it is worth noting that this provision is based on the false idea of a fair system. The provision states that sealing should take longer if a landlord wins the eviction case—which assumes that the landlord's eviction filing was founded, the win was genuine, and that the trial is fair to both parties. However, a landlord has almost nothing to lose by filing an eviction (it costs $15 in DC), there are no repercussions for filing evictions based on a faulty premise, the landlord can win simply because a tenant does not show up in court, and most landlords have a lawyer, while most tenants represent themselves.[57] The power imbalance between tenants and landlords should be considered in every policy. In this one, it is not.	

[52] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.
[53] Coventry, Kate. Public Hearing on B24-96 & B24-106, § Committee on Housing and Executive Administration (2021).
[54] Duarte, Natasha. Public Hearing on B24-96 & B24-106, § Committee on Housing and Executive Administration (2021).
[55] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.
[56] Harding, Amber. Public Hearing on B24-96 & B24-106, § Committee on Housing and Executive Administration (2021).
[57] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
The Superior Court's decision to seal or not seal a record can be appealed.	The decision to seal or not seal must be shared with the tenant and their lawyers. The tenant can get a copy of the decision from the Superior Court at any time with their ID. If a record is sealed, the tenant can request to open it. The court can also open it if there is a compelling need. Once the Court makes a decision about an eviction filing, the tenant can appeal it. While an appeal may result in a technical sealing of the case, the filing may still appear on a tenant's rental applications, **maintaining the status quo for residents of color**, who are most likely to experience evictions in the District.	
If a landlord 1) denies a potential tenant or 2) approves the tenant but with worse terms than previously communicated (due to a sealed eviction filing), the tenant can bring a civil case to the DC Superior Court within one year.	If the tenant wins, they will receive attorneys' fees, money for damages, and equitable relief if appropriate. This provision ensures that a tenant has a path forward if they experience rental discrimination due to a sealed eviction filing. However, if the tenant has an urgent need for housing, there is no quick resolution option. While it is unclear how many tenants would exercise this right due to the logistical, time, energy, financial, and emotional costs of bringing a case, this provision has **the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color.	

EVICTION DATA AMENDMENTS TO THE RENTAL HOUSING ACT OF 1985

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
The DC Superior Court can release eviction records for research, education, journalistic, or governmental purposes after balancing the tenants' interests with the interests of the requesting group. Data use agreements about personally identifiable	This provision also states that personally identifiable information (such as tenant name and address) can only be shared after the researcher requests it in writing, the court approves the project's data use agreement, an Institutional Review Board (a group that reviews and monitors research) approves, the researcher provides documentation about how the information will be kept confidential, and the researcher provides documentation of how the data will be stored and destroyed. These guidelines are incredibly important to keep individual information secure, while ensuring that the data about evictions can be used for research, which can inform policy—which **has the potential to improve racial equity in the District of Columbia.** A case in point is the Georgetown report *Eviction in Washington, DC* written by Brian McCabe and Eva Rosen, which has been cited many times in this Racial Equity Impact Assessment. The McCabe and Rosen	

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
information from court records must follow certain guidelines.[58]	report would not have been possible without access to "court records of every eviction filing from 2014 to 2018 in Washington, DC."[59]	
The Superior Court shall not order the redaction of the tenant's name from any published opinion of the trial or appellate courts that refer to a record sealed under this section.	This provision means that if an eviction case is appealed, the tenant's name will become public (even if the eviction record is sealed). It's unclear if (but likely that) an appeal case would show up on a third-party tenant screening software. However, as the Committee Print reads, the appearance of an appealed eviction case on a tenant screening report would **maintain the status quo of racial inequity** in the District of Columbia. This is because the Committee Print does not seal evictions immediately, so they will still show up on tenant screenings and negatively impact a tenant's future ability to rent.	

TENANT SCREENING AMENDMENTS TO THE RENTAL HOUSING ACT OF 1985

PROVISION	RACIAL EQUITY IMPACT SUMMMARY	IMPACT
Before asking for screening fees or screening information, landlords must tell prospective tenants about their screening process.	Specifically, the landlord must share: the amount and purpose of each fee or deposit, whether the deposits are required or voluntary, whether the fee or deposit is refundable, the types of information accessed for a tenant screening, the criteria used for denying an application, the name and contact information of the credit or consumer reporting agency that will be used (and how to get a free copy of the report), the number of units available to rent by bedroom size and monthly rent, and how many days it will take the landlord to approve or deny the application. This provision improves transparency in the screening process. By requiring this information to be shared up front, the tenant can also decide whether it makes sense for them to pay the application fee. The provision also creates a system of accountability for the landlord and potential tenant, who now must map any denial or worse offer back to the screening criteria they provided.	

[58] Specifically, this provision prohibits the sharing of the personally identifiable information (PII) without the court's permission, requires PII only be used for research and administrative reasons, requires that the PII only be used for the project described in the application, prohibits PII be used for any action that directly affects a person or institution identified in the data, includes the amount the researcher owes to the court for the project, and states that the data shared is owned by the court, not the researcher.
[59] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.

PROVISION	RACIAL EQUITY IMPACT SUMMMARY	IMPACT
	As the Office of the Attorney General testified, "having a law on the books is not enough." It must be implemented and enforced. If this provision is implemented and enforced, this provision **has the potential to advance racial equity** in the District of Columbia.	
Landlords cannot charge more than $35 or the actual screening cost, whichever is more. If a screening is not conducted, landlords must refund application fees within 14 days.	High application fees can be a form of income discrimination. In DC, this means high fees can also be a form of racial discrimination, as Black households are overrepresented in low-income brackets in DC.[60] By capping application fees and requiring them to be returned if not used, this provision **has the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color.	
While screening tenants, landlords cannot ask about, require a potential tenant to share, or base a denial or worse rental offer on certain aspects of a tenant's rental history.	Specifically, tenants cannot be screened on: a previous eviction if the landlord did not win, a previous eviction filed three or more years ago, a broken lease due to a defense of District or federal law relating to domestic violence, dating violence, sexual assault, or stalking, or a broken lease from 3+ years ago. This provision does create important protections for tenants, especially domestic violence survivors. At the same time, the provision is built on the false idea of a fair system. The provision states that tenants cannot be screened based on an eviction their landlord did not win. In other words, a tenant *can* be screened based on an eviction the landlord *did* win—which assumes that the landlord's eviction filing was founded, the win was genuine, and that the trial was fair to both parties. However, this is not true. A landlord has almost nothing to lose by filing an eviction (it costs $15 in DC), there are no repercussions for filing evictions based on a faulty premise, the landlord can win simply because a tenant does not show up in court, and most landlords have a lawyer, while most tenants represent themselves.[61] The power imbalance between tenants and landlords should be considered in every policy. In this one, it is not. Therefore, this provision maintains the power imbalance and therefore also **maintains the status quo of racial inequity** in the District of Columbia.	

[60] D.C. Policy Center and Council Office of Racial Equity. "DC Racial Equity Profile for Economic Outcomes."
[61] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.

PROVISION	RACIAL EQUITY IMPACT SUMMMARY	IMPACT
Landlords cannot base an application denial or worse rental offer *only* on the applicant's credit score. However, landlords can base decisions off other information within a credit or consumer report directly relevant to fitness as a tenant.	Given the well documented racism within credit scores,[62] prohibiting landlords from using only a credit score to screen tenants is a step in the right direction. However, continuing to allow landlords to screen based on other information in a credit or consumer report may cancel out this step. Credit reports also show payment history on mortgages and other loans as well as records of debt collection lawsuits. "Decades of discrimination in employment, lending policies, debt collection, and even criminal prosecution have left Black families struggling to make ends meet"—which disproportionately affects Black borrowers' ability to pay during moments of financial instability. In addition, "Black borrowers are more likely to fare badly when taken to court by their creditors…who are more likely to sue Black borrowers."[63] In addition to packaging racial bias, there are often many errors in the documents used for tenant screening as DCFPI testified. Their testimony cited one study that found 79% of respondents found errors in one of the three major credit reports and that 25% of the errors "were significant enough to cause a wrongful denial of credit."[64] This provision is likely to **maintain the status quo of racial inequity** for the District's Black residents, Indigenous residents, and other residents of color.	
If the landlord denies a rental application or provide a worse rental offer, the landlord must provide the potential tenant with a written notice. After a tenant receives a denial or worse offer, the tenant can respond to the landlord about the evidence.	The written notice must include why the tenant received a denial or worse offer, a copy or summary of third-party information that led to the denial or worse offer, and information on the tenant's right to dispute the material used to make the landlord's decision. However, the bill does not state how quickly the landlord must send this letter. This makes the rule difficult, if not impossible, to enforce. Tenants who need to find housing urgently, including residents with housing vouchers, do not benefit from this provision. This provision **maintains the status quo** for residents of color, who receive 98% most of the housing vouchers in the District.[65]	

[62] Campisi, Natalie. "From Inherent Racial Bias to Incorrect Data—The Problems With Current Credit Scoring Models." *Forbes Advisor*, February 26, 2021.
[63] Singletary, Michelle. "Credit Scores Are Supposed to Be Race-Neutral. That's Impossible." *Washington Post*, October 16, 2020.
[64] Coventry, Kate. Public Hearing on B24-96 & B24-106, § Committee on Housing and Executive Administration (2021).
[65] "Assisted Housing: National and Local | HUD USER."

PROVISION	RACIAL EQUITY IMPACT SUMMMARY	IMPACT
The landlord must provide a response to this evidence via snail mail, e-mail, or in-person within 30 days of receiving the information from the tenant. During this time, the landlord can lease the unit to other prospective tenants.	In this scenario, a landlord has 30 days to respond to the tenant. In this timespan, it is likely that a landlord will rent to someone else and/or the initial tenant would be forced to move on to other apartments due to time constraints. A tenant may engage in a fruitless back and forth with the landlord only to have the landlord rent to someone else. While the landlord could owe a fine if they end up breaking the law, the initial tenant will have already been harmed and the fine goes to the District, not the tenant.[66] For this reason, this provision **maintains the status quo** for residents of color, who experience housing discrimination based on race.[67]	
If a landlord violates this section or any related regulation, they must pay a fine of less than $1000 for each violation.	This provision may encourage more landlords to follow the law, but it is hard to know how many landlords it will impact. For this reason, this provision **has the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color. In addition, it should be noted that fines may have a disproportionate impact on Black residents and other residents of color. The Committee Print is unclear on how the size of the fine would be determined,[68] but even the same size fine for landlords of all races may be more penalizing to Black landlords and other landlords of color, because they face higher rates of poverty in the District than white residents.[69] Economic inequities are the result of the relentless denial and blocking of Black residents and other residents of color from wealth and education building opportunities.	

[66] Donaldson, Polly. Public Hearing on B24-119, § Committee on Housing and Executive Administration (2021).
[67] The Urban Institute. "Housing Discrimination Against Racial and Ethnic Minorities 2012," June 2013.
[68] This omission creates an opportunity for racial discrimination. Research has shown racial inequities in sentencing for the same offense.
[69] National Equity Atlas, 2017.

AMENDMENTS TO THE HUMAN RIGHTS ACT OF 1977

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
Discrimination in the District of Columbia based on source of income or a sealed eviction record is illegal. The definition of "source of income" is expanded to include "District payments" rather than just "federal payments."	98% of District renters with a housing voucher (or income-based housing subsidy) are people of color[70] and renters in the majority Black Wards 7 and 8 "are hit hardest by eviction filings."[71] Expanding the definition of source of income to include District payments is an important step to protect more individuals. Source of income discrimination is an unfortunately well-documented issue (despite it being illegal)[72] and exacerbates the difficult task of finding an apartment with a housing voucher, due to the limited time frame that residents have to find a home (60 days in the District).[73] This provision **has the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color.	⇢
It is illegal discrimination to prohibit a potential tenant with an income-based housing subsidy based on certain criteria.	Specifically, landlords cannot turn away a potential tenant because of previous rental history (including late or unpaid rent) if it occurred before the tenant received subsidy, income level (not including the income level required by federal or local law to receive the subsidy), credit score or lack of credit score, or any other credit issues the tenant experienced before they received the subsidy. Since 98% of District renters with a housing voucher (or income-based housing subsidy) are people of color,[74] this provision **has the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color.	⇢
The court will assume illegal discrimination if a housing provider charges a potential tenant a fee or deposit beyond an application fee and security deposit.	High or additional application fees and deposits can be a form of income discrimination. In DC, this means that additional costs can also be a form of racial discrimination, as Black households are overrepresented in low income brackets in DC.[75] By assuming illegal discrimination if additional fees are charged, this provision **has the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color.	⇢

[70] "Assisted Housing: National and Local | HUD USER."
[71] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.
[72] Adjami, Nick. "Source of Income Discrimination Perpetuates Racial Segregation in DC." *Equal Rights Center* (blog), August 19, 2020.
[73] McCabe, Brian. "How Housing Vouchers Work, Explained." August 17, 2016.
[74] "Assisted Housing: National and Local | HUD USER."
[75] D.C. Policy Center and Council Office of Racial Equity. "DC Racial Equity Profile for Economic Outcomes."

PROVISION	RACIAL EQUITY IMPACT SUMMARY	IMPACT
The court will assume illegal discrimination if a landlord denies a rental applicant that meets their posted criteria but instead offers the unit to an applicant not in a protected class and who submitted their application later than the denied applicant.	This **provision has the potential to improve housing outcomes** for Black residents, Indigenous residents, and other residents of color by making it easier to assume illegal discrimination (and therefore bring legal action). In addition, this provision may especially support residents who are part of several protected classes, such as Black women who receive a housing subsidy. In the District, Black women receive most of the housing vouchers[76] due to decades of racial inequities in education,[77] hiring discrimination,[78] job segregation,[79] wealth inequities, and gender and income inequities all contribute to gender and racial inequities in rent burden.[80]	
It is illegal to discriminate based on a person having a sealed eviction record or the belief that a person has a sealed eviction record. It is illegal to require a person to disclose sealed eviction records under certain circumstances.	Specifically, this bill proposes making it illegal to disclose a sealed eviction when entering a property transaction, negotiating the terms of a property transaction, appraising a property, agreeing to lend money, guaranteeing a loan, purchasing a loan, accepting residential property as security for a loan, accepting a mortgage, making funds available for many transactions related to property, or providing insurance relating to ownership of property, providing access to facilities, services, repairs, or improvements for a tenant or lessee, providing access to membership or participation in activities relating to buying or selling residential property. Because renters in the majority Black Wards 7 and 8 "are hit hardest by eviction filings,"[81] this provision **has the potential to improve housing and financial outcomes** for Black residents in the District.	

[76] Ibid.
[77] DC Racial Equity Profile, D.C. Policy Center and Council Office of Racial Equity.
[78] Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination, Marianne Bertrand and Sendhil Mullainathan, National Bureau of Economic Research.
[79] DC Racial Equity Profile, D.C. Policy Center and Council Office of Racial Equity.
[80] Ibid.
[81] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.

FURTHER CONSIDERATIONS

The bill does not require the government to collect data or monitor data based on race.
Much of the information we have about DC eviction trends comes from the McCabe and Rosen report about evictions between 2014 and 2018. Without external interest from researchers, the important findings in the report may not have surfaced.

In addition, more active monitoring within government could speed up the policymaking cycle. For this Racial Equity Impact Assessment, CORE is referencing 2018 data to analyze policy at the end of 2021, that is likely not going to be implemented until 2022.

This bill does not address the role of third-party tenant screening companies.
While this group plays an outsized role in the policy issues related to this bill, there are no penalties for tenant screening companies who provide inaccurate or biased summary information. In addition, without addressing third-party tenant screening companies, residents with an eviction filing as of today will likely continue to experience the negative effects of a filing, even if their records are technically sealed by the court.

"Nothing about us, without us."
While the bill includes critically important rules about the sharing, destruction, and uses of tenant data, it does not require researchers to collaborate with or seek the input of the tenants who experience eviction. The saying "nothing about us, without us" has been used in many contexts and is very relevant here. Research should be guided, informed, and done collaboratively with those most affected. In the case of evictions, those most affected are residents of color.

The bill does not provide real-time resolutions to problems faced by tenants and potential tenants.
Linda Shaw, a public witness who works as Permanent Supportive Housing Case Manager with Metropolitan Educational Solutions, testified that a real time program to protect against landlord discrimination could be a helpful tool.[82] She suggested setting up a phone number that tenants or case managers could call on the spot to clarify guidelines and tenant rights while potential tenants are apartment hunting. While it is important to have laws, proactive enforcement, and court-based remedies available, discrimination has immediate effects that should be addressed as soon as possible.

This bill does not specify how landlords can or cannot use evictions filed outside of the District in their tenant screening decisions.
Given racial inequities in evictions across the country, this omission/ambiguity could have outsized effects on communities of color. One study noted that "Black and Latinx renters in general, and women in particular, are disproportionately threatened with eviction and disproportionately evicted from their homes."[83]

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[82] Shaw, Linda. Public Hearing on B24-96 – Eviction Record Sealing Authority Amendment Act of 2021 & B24-106 – Fair Tenant Screening Act of 2021, § Committee on Housing and Executive Administration (2021).
[83] Hepburn, Peter, Renee Louis, and Matthew Desmond. "Racial and Gender Disparities among Evicted Americans." Eviction Lab.

This bill does not discourage landlords filing bad faith evictions.
Cost influences the frequency of eviction filing, and DC has the lowest eviction filing fee in the country at $15. [84] This low fee does nothing to dissuade landlords from using eviction filing as an intimidation tool, exacerbating the power imbalance between landlords and tenants. An important consideration is that while the cost for landlords to file an eviction is only $15, the cost to tenants is unquantifiable.

ASSESSMENT LIMITATIONS

Alongside the analysis provided above, the Council Office of Racial Equity encourages readers to keep the following limitations in mind:

Assessing legislation's potential racial equity impacts is a rigorous, analytical, and uncertain undertaking. Assessing policy for racial equity is a rigorous and organized exercise but also one with constraints. It is impossible for anyone to predict the future, implementation does not always match the intent of the law, critical data may be unavailable, and today's circumstances may change tomorrow. Our assessment is our most educated and critical hypothesis of the bill's racial equity impacts.

This assessment intends to inform the public, Councilmembers, and Council staff about the legislation through a racial equity lens. As a reminder, a REIA is not binding. Regardless of the Council Office of Racial Equity's final assessment, the legislation can still pass.

This assessment aims to be accurate and useful, but omissions may exist. Given the density of racial equity issues, it is unlikely that we will raise *all* relevant racial equity issues present in a bill. In addition, an omission from our assessment should not: 1) be interpreted as a provision having no racial equity impact or 2) invalidate another party's racial equity concern.

[84] McCabe, Brian J., and Eva Rosen. "Eviction in Washington, DC." Georgetown University, Fall 2020.

F

OFFICE OF THE GENERAL COUNSEL
Council of the District of Columbia
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(202) 724-8026

MEMORANDUM

TO: **Councilmember Anita Bonds**

FROM: **Nicole L. Streeter, General Counsel** *NLS*

DATE: **December 1, 2021**

RE: **Legal Sufficiency Determination for B24-XXX, the Eviction Record Sealing Authority and Fairness in Renting and Eviction Record Sealing Authority Amendment Act of 2021**

The measure is legally and technically sufficient for Council consideration.

This bill would amend section 16-1501 of the D.C. Official Code to prohibit a person from filing a complaint for restitution of possession unless that person is owed more than $600 and has a valid rental registration and current license for rental housing.

The measure would also amend Title V of the Rental Housing Act ("RHA").[1] In section 501, the bill would clarify and amend current notice requirements for evictions by requiring housing providers to give tenants written notices regardless of the reason for eviction (and to provide the notice in the tenant's language if the housing provider is aware that the tenant speaks a language covered by the Language Access Act of 2004[2]), specifying what information must be included in such notices, and requiring photographs with visible time stamps if the notices are posted rather than delivered.

Furthermore, the bill would add new sections 509 and 510 to the RHA, which would require Superior Court judges to seal eviction records within 30 days if the judgment is not in favor of the housing provider

[1] Effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.01 *et seq*.)
[2] Effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933

or after 3 years if the judgment is in favor of the housing provider. The Superior Court would also be required to seal eviction records upon a motion by the tenant in certain enumerated circumstances, including, but not limited to, where the tenant can demonstrate that he or she owed less than $600, the unit was rented with a District or federal subsidy, the housing provider filed the action in violation of the RHA or the Human Rights Act of 1977 ("HRA")[3], the housing provider failed to timely abate conditions that constituted a violation of the residential building codes promulgated in the District of Columbia Municipal Register, and other circumstances where the Court believes that relief is appropriate. Additionally, the Court would be required to unseal eviction records upon a request of the tenant or upon a compelling show of need and the Court would be permitted to unseal eviction records for scholarly, educational, journalistic, or governmental purposes. A prospective tenant would be permitted to file a claim against a housing provider if the housing provider took adverse action against the prospective because of an eviction record that the housing provider knew was sealed.

The measure would also require housing providers to disclose certain information prior to requesting information or fees for the purpose of screening a prospective tenant. It would limit the fees charged to a prospective tenant, require a refund of application fees under certain circumstances, and prohibit the use of certain information for the purposes of adverse actions against a prospective tenant.

Lastly, the bill would amend the HRA to describe types of actions that may be considered unlawful source of income discrimination, to prohibit discrimination in housing based on a person having a sealed eviction record, and to prohibit conditioning real estate transactions and other terms or conditions of housing on disclosure of a sealed eviction record.

I am available if you have any questions.

[3] effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.01 *et seq*.)

G

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Section 16-1501 of the District of Columbia Official Code to provide that the person aggrieved shall not file a complaint seeking restitution of possession for nonpayment of rent in an amount less than $600 and to provide that the person aggrieved shall not file a complaint seeking restitution of possession without a current rental housing license; to amend the Rental Housing Act of 1985 to serve a written notice on a tenant before evicting the tenant for nonpayment of rent, to require photographic evidence to be submitted to court if a summons is posted on the property, to require notice in a tenant's primary language if the housing provider knows a tenant speaks a covered language other than English, to prohibit a housing provider from filing a claim to recover possession of a rental unit for the nonpayment of rent unless the housing provider has provided the tenant with at least 30 days' written notice of its right to do so, to specify language that must be included in a nonpayment notice, to require the Court to dismiss claims for possession in certain circumstances, to prohibit eviction if the housing provider does not have a valid rental registration or claim of exemption and current business license, to require the Court to seal certain eviction records, to authorize the Court to seal certain evictions records upon motion by a defendant, to authorize the Court to release sealed eviction records under limited circumstances with privacy protections in place, to require disclosure of certain information prior to requesting information or fees for the purpose of screening a prospective tenant, to limit the fees charged to a prospective tenant, to require a refund of application fees under certain circumstances, and to prohibit the use of certain information for the purposes of adverse actions against a prospective tenant; to amend the Human Rights Act of 1977 to describe types of actions that may be considered unlawful source of income discrimination, to prohibit discrimination in housing based on a person having a sealed eviction record, and to prohibit conditioning real estate transactions and other terms or conditions of housing on disclosure of a sealed eviction record.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2021".

Sec. 2. Section 16-1501 of the District of Columbia Official Code is amended as follows:

(a) The existing text is designated as subsection (a).

(b) New subsections (b), (c), and (d) are added to read as follows:

"(b) The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section for nonpayment of rent in an amount less than $600. Nothing in this subsection shall prevent the person aggrieved from filing a complaint to recover the amount owed.

"(c)(1) The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section without a valid rental registration or claim of exemption pursuant to section 205 of the Rental Housing Act, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.05), and a current license for rental housing issued pursuant to D.C. Official Code § 47-2828(c)(1), as certified at the time of filing and documented at the initial hearing.

"(2) The Court may waive the requirements for a current license for rental housing in this subsection if the person aggrieved can demonstrate that they were unable to obtain or renew a current rental housing license due to extenuating circumstances.

"(3) The requirements of this subsection shall not apply to complaints involving subtenants.

"(d) At the initial hearing for any complaint for possession, if the complaint does not allege sufficient facts or the person aggrieved has not produced sufficient documentation to meet all requirements under District law, the Court shall dismiss the complaint.".

Sec. 3. Title V of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.01 *et seq.*), is amended as follows:

(a) Section 501 (D.C. Official Code § 42-3505.01) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a)(1) Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit; provided, that the nonpayment of a late fee shall not be the basis for an eviction. No tenant shall be evicted from a rental unit for any reason unless the tenant has been served with a written notice which meets the requirements of this section. Notices for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator.

"(2) If a notice is served by posting a copy on the premises, a photograph of the posted notice must be submitted to the court. The photograph must have a readable timestamp that indicates the date and time of when the summons was posted.

"(3) If the landlord knows the tenant speaks a primary language other than English or Spanish that is covered under the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933), the landlord must provide the notice in that language.

"(4) The Court shall dismiss a claim brought by a housing provider to recover possession of a rental unit where the housing provider:

"(A) Did not provide notice as required by this section;

"(B) Filed the claim to recover possession of the rental before the number of days of notice required by this section has elapsed;

"(C) In cases where a notice to quit or a summons and complaint are served by posting on the leased premise, failed to provide the Superior Court with photographic evidence of the posted service with a readable timestamp that indicates the date and time of when the notice or summons were posted, or".

"(D) In cases where the landlord knows the tenant speaks a primary language other than English or Spanish that is covered under § 2-1933, failed to provide the notice required by this section in that language.".

(2) A new subsection (a-1) is added to read as follows:

"(a-1) (1) A housing provider shall provide the tenant with notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit for the non-payment of rent at least 30 days before filing the claim.

"(2) Notice provided to a tenant shall contain the following or substantively similar language:

"The total amount of rent owed is [list specific amount due]. A ledger showing the dates of rent charges and payments for the period of delinquency is attached. **You have the right to remain in the rental unit** if the total balance of unpaid rent is paid in full.

"[Name of housing provider] has the right to file a case in court seeking your eviction if you do not pay the balance of unpaid rent in full within 30 days of this notice.

"You have the right to defend yourself in court. Only a court can order your eviction. For further help or to seek free legal services, contact the Office of the Tenant Advocate at 202-719-6560 or the Landlord Tenant Legal Assistance Network at 202-780-2575.".

(3) Subsection (b) is amended to read as follows:

"(b) A housing provider may recover possession of a rental unit when the tenant is violating an obligation of tenancy, other than nonpayment of rent, and fails to correct the violation within 30 days after receiving notice from the housing provider."

(4) A new subsection (r) is added to read as follows:

"(r) No tenant shall be evicted from a rental unit unless the housing provider provides documentation to the court at the time of filing a writ of restitution demonstrating that the housing provider has a current business license for rental housing issued pursuant to D.C. Official Code § 47-2828(c)(1), unless the court waived the license requirement. The requirements of this subsection shall not apply to complaints involving subtenants.

(b) New sections 509 and 510 are added to read as follows:

"Sec. 509. Sealing of eviction court records.

"(a) The Superior Court shall seal all court records relating to an eviction proceeding:

"(1) If the eviction proceeding does not result in a judgment for possession in favor of the housing provider, 30 days after the final resolution of the eviction proceeding; or

"(2) If the eviction proceeding results in a judgement for possession in favor of the housing provider, 3 years after the final resolution of the eviction proceeding.

"(b) For court records relating to an eviction proceeding filed before March 11, 2020, the requirements of subsection (a) of this section shall apply as of January 1, 2022.

"(c)(1) The Superior Court shall seal court records relating to an eviction proceeding at any time, upon motion by a tenant, if:

"(A) The tenant demonstrates by a preponderance of the evidence that:

"(i) The housing provider brought the eviction proceeding because the tenant failed to pay an amount of $600 or less;

"(ii) The tenant was evicted from a unit under any federal or District site-based housing subsidy program, or any federal or District tenant-based housing subsidy program;

"(iii) The housing provider's initiation of eviction proceedings against the tenant was in violation of:

"(I) Section 502; or

"(II) Section 261 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.61);

"(iv) The housing provider failed to timely abate a violation of 14 DCMR § 100 et seq. or 12G DCMR 100 *et seq*. in relation to the defendant tenant's rental unit;

"(v) The housing provider initiated the eviction proceedings because of an incident that would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"(vi) The parties entered into a settlement agreement that did not result in the housing provider recovering possession of the unit; or

"(B) The Superior Court determines that there are other grounds justifying such relief.

"(2) An order dismissing, granting, or denying a motion filed under this subsection shall be a final order for purposes of appeal.

"(3)(A) A copy of an order issued under this subsection shall be provided to the tenant or his or her counsel.

"(B) A tenant may obtain a copy of an order issued under this subsection at any time from the Clerk of the Superior Court, upon proper identification, without a showing of need.

"(d) Records sealed under this section shall be opened:

"(1) Upon written request of the tenant; or

"(2) On order of the Superior Court upon a showing of compelling need.".

"(e) The court may release records sealed under this section for scholarly, educational, journalistic, or governmental purposes, upon a balancing of the interests of the tenant for nondisclosure against the interests of the requesting party; provided, that personally identifiable information about the tenant, such as the name and address shall only be disclosed after:

"(A) Submission of a written request to the court by a researcher;

"(B) Approval by the court through the execution of a written data use agreement that describes the research project;

"(C) Documented applicable Institutional Review Board approval;

"(D) Provision of documented procedures to protect the confidentiality and security of the information; and

"(E) Provision of documented procedures for data storage and the data destruction method to be used for the information provided.,".

"(f) Any agreement pursuant to which personally identifiable information contained in a court record or report is disclosed shall:

"(1) Prohibit the re-release of any personally identifiable information without explicit permission from the court;

"(2) Require that the information shall be used solely for research or administrative purposes;

"(3) Require that the information shall be used only for the project described in the application;

"(4) Prohibit the use of the information as a basis for legal, administrative, or any other action that directly affects any individual or institution identifiable from the data;

"(5) Set forth the payment, if any, to be provided by the researcher to the court for the specified research project; and

"(6) Require that ownership of data provided under the agreement shall remain with the court, not the researcher or the research project.

"(g) The Superior Court shall not order the redaction of the tenant's name from any published opinion of the trial or appellate courts that refer to a record sealed under this section.

"(h)(1) Where a housing provider intentionally bases an adverse action taken against a prospective tenant on an eviction court record that the housing provider knows to be sealed pursuant to this section, the prospective tenant may bring a civil action in the Superior Court of the District of Columbia within one year after the alleged violation and, upon prevailing, shall be entitled to the following relief:

"(A) Reasonable attorneys' fees and costs;

"(B) Incidental damages; and

"(C) Equitable relief as may be appropriate.

"(2) For the purposes of this section, the term "adverse action" means:

"(A) Denial of a prospective tenant's rental application; or

"(B) Approval of a prospective tenant's rental application, subject to terms or conditions different and less-favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to a prospective tenant.

"Sec. 510. Tenant screening.

"(a) Before requesting any information or fees from a prospective tenant as a part of tenant screening, a housing provider shall first notify the prospective tenant in writing, or by posting in a manner accessible to prospective tenants:

"(1) The amount and purpose of each fee or deposit, whether mandatory or voluntary, that may be charged to a tenant or prospective tenant and whether the fee or deposit is refundable;

"(2) The types of information that will be accessed to conduct a tenant screening;

"(3) The specific criteria that will result in denial of the application;

"(4) Any additional criteria that may result in denial of the application;

"(4) If a credit or consumer report is used, the name and contact information of the credit or consumer reporting agency and a statement of the prospective tenant's rights to obtain a free copy of the credit or consumer report in the event of a denial or other adverse action;

"(5) The approximate quantity of rental units that will be available for rent over a specified period, by bedroom size and monthly rent; and

"(6) The number of days after receipt of a prospective tenant's application that the housing provider will respond with an approval or denial decision.

"(b) A housing provider may require a prospective tenant to pay an application fee of no more than the greater of $35 or the actual cost of obtaining information for screening a prospective tenant.

"(c) If a housing provider fails to conduct a screening of a prospective applicant for any reason, the housing provider shall refund any application fee paid by the prospective tenant within a reasonable time, not to exceed 14 days.

"(d) For the purposes of tenant screening, a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on:

"(1) Whether a previous action to recover possession from the prospective tenant occurred if the action:

"(A) Did not result in a judgment for possession in favor of the housing provider; or

"(B) Was filed 3 or more years ago.

"(2) Any allegation of a breach of lease by the prospective tenant if the alleged breach:

"(A) Stemmed from an incident that the prospective tenant demonstrates would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"(B) Took place 3 or more years ago.

"(e) A housing provider shall not base an adverse action solely on a prospective tenant's credit score, although information within a credit or consumer report directly relevant to fitness as a tenant can be relied upon by a housing provider.

"(f) If a housing provider takes an adverse action, he or she shall provide a written notice of the adverse action to the prospective tenant that shall include:

"(1) The specific grounds for the adverse action;

"(2) A copy or summary of any information obtained from a third-party that formed a basis for the adverse action; and

"(3) A statement informing the prospective tenant of his or her right to dispute the accuracy of any information upon which the housing provider relied in making his or her determination.

"(g)(1) After receipt of a notice of an adverse action, a prospective tenant may provide to the housing provider any evidence that information relied upon by the housing provider is:

"(A) Inaccurate or incorrectly attributed to the prospective tenant; or

"(B) Based upon prohibited criteria under subsection (d) of this section.

"(2) The housing provider shall provide a written response, which may be by mail, electronic mail, or in person, to the prospective tenant with respect to any information provided under this subsection within 30 business days after receipt of the information from the prospective tenant.

"(3) Nothing in this subsection shall be construed to prohibit the housing provider from leasing a housing rental unit to other prospective tenants.

"(h) Any housing provider who knowingly violates any provision of this section, or any rule issued to implement this section, shall be subject to a civil penalty for each violation not to exceed $1,000.

"(i) For the purposes of this section, the term:

"(1) "Adverse action" means:

"(A) Denial of a prospective tenant's rental application; or

"(B) Approval of a prospective tenant's rental application, subject to terms or conditions different and less-favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to a prospective tenant.

"(2) "Tenant screening" means any process used by a housing provider to evaluate the fitness of a prospective tenant."."

Sec. 4. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 et seq.), is amended as follows:

(a) Section 101 (D.C. Official Code § 2-1401.01) is amended by striking the phrase "source of income" and inserting the phrase "source of income, sealed eviction record" in its place.

(b) Section 102 (D.C. Official Code § 2-1401.02) is amended as follows:

(1) Paragraph (27B) is redesignated as paragraph (27C)

(2) A new paragraph (27B) is added to read as follows:

"(27B) "Sealed eviction record" means an eviction record that has been sealed pursuant to section 509 of The Rental Housing Act of 1985, as introduced on DATE February 23, 2019 2021 (Bill 243-096XXX).".

(3) Paragraph 29) is amended by striking the phrase "federal payments" and inserting the phrase "federal or District payments" in its place.

(c) Section 221 (D.C. Official Code § 2-1402.21) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "source of income" and inserting the phrase "source of income, sealed eviction record" in its place.

(2) Subsection (a)(5) is amended by striking the phrase "source of income" and inserting the phrase "source of income, sealed eviction record" in its place.

(3) New subsections (g) and (h) are added to read as follows:

"(g) Source of income.

"(1) It shall be an unlawful discriminatory practice to do any of the acts prohibited in subsection (a) or subsection (b) of this section to a prospective tenant seeking to rent with the assistance of an income-based housing subsidy based on:

"(A) Prior rental history involving nonpayment or late payment of rent, if the nonpayment or late payment of rent occurred prior to receipt of the income-based subsidy;

"(B) Income level (other than whether or not the level is below a threshold as required by local or federal law), credit score, or lack of credit score; and

"(C) Any credit issues that arose prior to the receipt of the income-based subsidy.

"(2) There shall be a rebuttable presumption that an unlawful discriminatory practice has occurred if a housing provider charges a prospective tenant any mandatory fees or deposits other than a security deposit and application fee.

"(3) There shall be a rebuttable presumption that an unlawful discriminatory practice has occurred if a housing provider denies a rental application from a tenant that meets their posted

selection criteria and the same rental unit was offered to an applicant who is not of a protected class and who submitted their application one or more days later than the rejected applicant.

"(h) Sealed eviction records.

"(1) It shall be an unlawful discriminatory practice to do any of the acts prohibited in subsection (a) or subsection (b) of this section based on information contained within a sealed eviction record or the actual knowledge or belief that a person has a sealed eviction record.".

"(2) It shall be an unlawful discriminatory practice to require a person to disclose a sealed eviction record as a condition of:

"(A) Entering into any transaction in real property;

"(B) Inclusion of any clause, condition, or restriction in the terms of a transaction in real property;

"(C) Appraisal of a property, agreement to lend money, guarantee a loan, purchase a loan, accept residential real property as security for a loan, accept a deed of trust or mortgage, or otherwise make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of real property; or to provide title or other insurance relating to ownership or use of any interest in real property;

"(D) Access to facilities, services, repairs, or improvements for a tenant or lessee; or

"(E) Access to, or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of

selling or renting residential real estate, including in terms or conditions of access, membership or participation in any such organization, service, or facility.".

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register